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No. 03-9877

In The Supreme Court of the United States

JON B. CUTTER, et al.,

Petitioners,

vs.

REGINALD WILKINSON, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

JOINT APPENDIX VOLUME II, Pages 187 to 370

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN MILLER, et al.,	:	
Plaintiffs,	:	**Case No. C2-98-275**
v.	:	**MAGISTRATE JUDGE KEMP**
REGINALD WILKINSON, et al.,	:	**CLASS ACTION**
Defendants.	:	
JOHN GERHARDT,	:	
Plaintiff,	:	**Case NO. C2-95-517**
v.	:	**JUDGE SARGUS**
ALAN LAZAROFF, WARDEN, et al.,	:	**MAGISTRATE JUDGE KEMP**
Defendants.	:	

CONSOLIDATED PARTIAL MOTIONS TO DISMISS

* * *

[41] *See also, United States v. Faase*, ___ F.3d ___, ___, 2000 U.S. App. LEXIS 23708 at **14-15.

Those patterns are certain to occur here. We know from actual experience that RFRA forced state officials to reallocate resources in ways that interfered with the delivery of religious services to the majority of inmates in order to accommodate the needs of a small but vocal minority of adherents to unconventional faiths.[43] We also know that RFRA forced the states to absorb significant

[43] See notes 2 through 8, *supra*, and the corresponding text.

litigation burdens to comply with that legislation's federal mandate.[44] Those effects must reasonably be expected to follow RLUIPA given its close identity to RFRA. They are precisely the types of diversions and costs discussed in *New York* and *Printz*, but they will be borne by the states, not Congress. Further, there will undoubtedly be political costs exacted for using the tax dollars of Ohio's African American, Hispanic, and Asian citizens to accommodate, and hence effectively subsidize, Plaintiffs' "religious" expression, expression that advocates the disenfranchisement, if not the outright extermination, of Ohio's racial minorities. (Auth. 8). Unfortunately, "it will likely be [state elected officials], not some federal official, who will be blamed for" such a patently offensive use of public resources. *Printz*, 521 U.S. at 930.

New York and *Printz* conclusively establish that Congress cannot use its commerce powers to compel states to affirmatively regulate in accordance with federal policy choices. RLUIPA does exactly that, regulating the way states regulate one of the most highly regulated aspects of their internal operations. Moreover, it does so in a way that will force the states to absorb the costs of the regulatory regime it has imposed. It is hard to imagine a more flagrant violation of federalism.

* * *

[44] See notes 10, 11, and 12, *supra*, and the corresponding text.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN MILLER, et al.,	:	
Plaintiffs,	:	**CASE NO. C2-98-275**
v.	:	**MAGISTRATE JUDGE KEMP**
REGINALD WILKINSON, et al.,	:	**CLASS ACTION**
Defendants.	:	
JOHN GERHARDT,	:	
Plaintiff,	:	**CASE NO. C2-95-517**
v.	:	**JUDGE SARGUS**
ALAN LAZAROFF, WARDEN, et al.,	:	**MAGISTRATE JUDGE KEMP**
Defendants.	:	

CONSOLIDATED PARTIAL MOTIONS TO DISMISS
[Exhibits]

* * *

EXHIBIT A

Religious Land Use and Institutionalized Persons Act of 2000 (Engrossed in Senate)
S 2869 ES

106th CONGRESS
2d Session
S. 2869

AN ACT

To protect religious liberty, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States-of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Religious Land Use and Institutionalized Persons Act of 2000'.

SEC. 2. PROTECTION OF LAND USE AS RELIGIOUS EXERCISE.

(a) SUBSTANTIAL BURDENS –

(1) GENERAL RULE – No government shall impose or implement a land use regulation in a manner that imposes a substantial burden on the religious exercise of a person, including a religious assembly or institution, unless the government demonstrates that imposition of the burden on that person, assembly, or institution –

(A) is in furtherance of a compelling governmental interest; and

(B) is the least restrictive means of furthering that compelling governmental interest.

(2) SCOPE OF APPLICATION – This subsection applies in any case in which –

(A) the substantial burden is imposed in a program or activity that receives Federal financial assistance, even if the burden results from a rule of general applicability;

(B) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, even if the burden results from a rule of general applicability; or

(C) the substantial burden is imposed in the implementation of a land use regulation or system of land use regulations, under which a government makes, or has in place formal or informal procedures or practices that permit the government to make, individualized assessments of the proposed uses for the property involved.

(b) DISCRIMINATION AND EXCLUSION –

(1) EQUAL TERMS – No government shall impose or implement a land use regulation in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution.

(2) NONDISCRIMINATION – No government shall impose or implement a land use regulation that discriminates against any assembly or institution on the basis of religion or religious denomination.

(3) EXCLUSIONS AND LIMITS – No government shall impose or implement a land use regulation that –

(A) totally excludes religious assemblies from a jurisdiction; or

(B) unreasonably limits religious assemblies, institutions, or structures within a jurisdiction.

SEC. 3. PROTECTION OF RELIGIOUS EXERCISE OF INSTITUTIONALIZED PERSONS.

(a) GENERAL RULE – No government shall impose a substantial burden on the religious exercise of a person residing in or confined to an institution, as defined in section 2 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997), even if the burden results from a rule of general applicability, unless the government demonstrates that imposition of the burden on that person –

(1) is in furtherance of a compelling governmental interest; and

(2) is the least restrictive means of furthering that compelling governmental interest.

(b) SCOPE OF APPLICATION – This section applies in any case in which –

(1) the substantial burden is imposed in a program or activity that receives Federal financial assistance; or

(2) the substantial burden affects, or removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes.

SEC. 4. JUDICIAL RELIEF.

(a) CAUSE OF ACTION – A person may assert a violation of this Act as a claim or defense in a judicial proceeding and obtain appropriate relief against a government. Standing to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.

(b) BURDEN OF PERSUASION – If a plaintiff produces prima facie evidence to support a claim alleging a violation of the Free Exercise Clause or a violation of section 2, the government shall bear the burden of persuasion on any element of the claim, except that the plaintiff shall bear the burden of persuasion on whether the law (including a regulation) or government practice that is challenged by the claim substantially burdens the plaintiff's exercise of religion.

(c) FULL FAITH AND CREDIT – Adjudication of a claim of a violation of section 2 in a non-Federal forum shall not be entitled to full faith and credit in a Federal court unless the claimant had a full and fair adjudication of that claim in the non-Federal forum.

(d) ATTORNEYS' FEES – Section 722(b) of the Revised Statutes (42 U.S.C. 1988(b)) is amended –

(1) by inserting 'the Religious Land Use and Institutionalized Persons Act of 2000,' after 'Religious Freedom Restoration Act of 1993,'; and

(2) by striking the comma that follows a comma.

(e) PRISONERS – Nothing in this Act shall be construed to amend or repeal the Prison Litigation Reform Act of 1995 (including provisions of law amended by that Act).

(f) AUTHORITY OF UNITED STATES TO ENFORCE THIS ACT – The United States may bring an action for injunctive or declaratory relief to enforce compliance with this Act. Nothing in this subsection shall be construed to deny, impair, or otherwise affect any right or authority of the Attorney General, the United States, or any agency, officer, or employee of the United States, acting under any law other than

this subsection, to institute or intervene in any proceeding.

(g) LIMITATION – If the only jurisdictional basis for applying a provision of this Act is a claim that a substantial burden by a government on religious exercise affects, or that removal of that substantial burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, the provision shall not apply if the government demonstrates that all substantial burdens on, or the removal of all substantial burdens from, similar religious exercise throughout the Nation would not lead in the aggregate to a substantial effect on commerce with foreign nations, among the several States, or with Indian tribes.

SEC. 5. RULES OF CONSTRUCTION.

(a) RELIGIOUS BELIEF UNAFFECTED – Nothing in this Act shall be construed to authorize any government to burden any religious belief

(b) RELIGIOUS EXERCISE NOT REGULATED – Nothing in this Act shall create any basis for restricting or burdening religious exercise or for claims against a religious organization including any religiously affiliated school or university, not acting under color of law.

(c) CLAIMS TO FUNDING UNAFFECTED – Nothing in this Act shall create or preclude a right of any religious organization to receive funding or other assistance from a government, or of any person to receive government finding for a religious activity, but this Act may require a government to incur expenses in its own operations to avoid imposing a substantial burden on religious exercise.

(d) OTHER AUTHORITY TO IMPOSE CONDITIONS ON FUNDING UNAFFECTED – Nothing in this Act shall –

(1) authorize a government to regulate or affect, directly or indirectly, the activities or policies of a person other than a government as a condition of receiving funding or other assistance; or

(2) restrict any authority that may exist under other law to so regulate or affect, except as provided in this Act.

(e) GOVERNMENTAL DISCRETION IN ALLEVIATING BURDENS ON RELIGIOUS EXERCISE – A government may avoid the preemptive force of any provision of this Act by changing the policy or practice that results in a substantial burden on religious exercise, by retaining the policy or practice and exempting the substantially burdened religious exercise, by providing exemptions from the policy or practice for applications that substantially burden religious exercise, or by any other means that eliminates the substantial burden.

(f) EFFECT ON OTHER LAW – With respect to a claim brought under this Act, proof that a substantial burden on a person's religious exercise affects, or removal of that burden would affect, commerce with foreign nations, among the several States, or with Indian tribes, shall not establish any inference or presumption that Congress intends that any religious exercise is, or is not, subject to any law other than this Act.

(g) BROAD CONSTRUCTION – This Act shall be construed in favor of a broad protection of religious exercise, to the maximum extent permitted by the terms of this Act and the Constitution.

(h) NO PREEMPTION OR REPEAL – Nothing in this Act shall be construed to preempt State law, or repeal Federal law, that is equally as protective of religious exercise as, or more protective of religious exercise than, this Act.

(i) SEVERABILITY – If any provision of this Act or of an amendment made by this Act, or any application of such provision to any person or circumstance, is held to be unconstitutional, the remainder of this Act, the amendments made by this Act, and the application of the provision to any other person or circumstance shall not be affected.

SEC. 6. ESTABLISHMENT CLAUSE UNAFFECTED.

Nothing in this Act shall be construed to affect, interpret, or in any way address that portion of the first amendment to the Constitution prohibiting laws respecting an establishment of religion (referred to in this section as the 'Establishment Clause'). Granting government funding, benefits, or exemptions, to the extent permissible under the Establishment Clause, shall not constitute a violation of this Act. In this section, the term 'granting', used with respect to government funding, benefits, or exemptions, does not include the denial of government funding, benefits, or exemptions.

SEC. 7. AMENDMENTS TO RELIGIOUS FREEDOM RESTORATION ACT.

(a) DEFINITIONS – Section 5 of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb-2) is amended –

(1) in Paragraph (1), by striking 'a State, or a subdivision of a State' and inserting 'or of a covered entity';

(2) in paragraph (2), by striking 'term' and all that follows through 'includes' and inserting 'term 'covered entity' means'; and

(3) in paragraph (4), by striking all after 'means' and inserting 'religious exercise, as defined in section 8 of the Religious Land Use and Institutionalized Persons Act of 2000.'.

(b) CONFORMING AMENDMENT – Section 6(a) of the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000bb-3(a)) is amended by striking 'and State'.

SEC. 8. DEFINITIONS.

In this Act:

(1) CLAIMANT – The term 'claimant' means a person raising a claim or defense under this Act.

(2) DEMONSTRATES – The term 'demonstrates' means meets the burdens of going forward with the evidence and of persuasion.

(3) FREE EXERCISE CLAUSE – The term 'Free Exercise Clause' means that portion of the first amendment to the Constitution that proscribes laws prohibiting the free exercise of religion.

(4) GOVERNMENT – The term 'government' –

(A) means –

(i) a State, county, municipality, or other governmental entity created under the authority of a State;

(ii) any branch, department, agency, instrumentality, or official of an entity listed in clause (i); and

(iii) any other person acting under color of State law; and

(B) for the purposes of sections 4(b) and 5, includes the United States, a branch, department, agency, instrumentality, or official of the United States, and any other person acting under color of Federal law.

(5) LAND USE REGULATION – the term 'land use regulation' means a zoning or landmarking law, or the application of such a law, that limits or restricts a claimant's use or development of land (including a structure affixed to land), if the claimant has an ownership, leasehold, easement, servitude, or other property interest in the regulated land or a contract or option to acquire such an interest.

(6) PROGRAM OR ACTIVITY – The term 'program or activity' means all of the operations of any entity as described in paragraph (1) or (2) of section 606 of the Civil Rights Act of 1964 (42 U.S.C. 2000d-4a).

EXHIBIT B

AFFIDAVIT OF DAVID SCHWARZ

County of Franklin :
: ss
State of Ohio :

Now comes David Schwarz, having been first duly sworn, and states and affirms as follows:

1. I am the Religious Services Administrator for the South Region of the Ohio Department of Rehabilitation and Correction ("O.D.R.C."). I have held that position since May of 1984. As part of my job duties I am involved in facilitating the delivery of religious services in 14 correctional institutions of various security levels throughout the southern half of the state of Ohio. One of my primary duties is to consult with institutional staff regarding the delivery of religious services and operational issues involving religious matters. I am also involved in setting religious policies on a department-wide basis and was actively involved in working with the Office of the Ohio Attorney General in connection with litigation arising under the Religious Freedom Restoration Act of 1993 ("R.F.R.A."). My job duties also include developing new religious programming, recruiting paid staff and volunteers for the delivery of religious services and acting as a liaison between O.D.R.C. and the religious community at large. As a result of those duties I have personal knowledge of the matters set forth herein.

2. R.F.R.A. had a very significant, and adverse, impact upon the delivery of religious services to inmates within the custody of O.D.R.C., as discussed below.

3. Following the enactment of R.F.R.A. I had to dramatically increase the amount of time spent responding to litigation. More specifically, following the enactment

of R.F.R.A. I was forced to spend between fifteen to twenty percent of my time working with the Office of the Ohio Attorney General in connection with lawsuits filed under R.F.R.A. During my previous years as an employee of O.D.R.C. I spent little time on litigation related issues. Not only did that divert me from other, more pressing tasks, it was also very frustrating in that many of the lawsuits involved issues that had been resolved before the enactment of R.F.R.A.

4. The enactment of R.F.R.A. also dramatically increased the amount of time I spent consulting with institutional staff regarding compliance with legal requirements. I spent between sixty to seventy percent of my time working with institutional staff to determine how to comply with R.F.R.A. That consultation involved revisiting issues settled before the enactment of R.F.R.A. and responding to the very significant increase in inmates "religiously" motivated demands for special accommodations that followed the enactment of R.F.R.A. In addition, I had to spend a significantly increased amount of time dealing with issues that had previously been handled by security staff alone but which now involve "religious" issues due to inmates' claims of "religious" significance for acts that are more probably have secular motivations. (i.e. gang related activities.).

5. The cumulative result of the matters described in paragraphs 3 and 4 above was a very significant reduction in the amount of time spent on actually facilitating the delivery of religious services. Prior to the enactment of R.F.R.A. I spent the vast majority my time on the development of new religious programming, recruiting providers of religious services and working with the religious community at large to facilitate the provision of religious services to inmates. However, because I was forced to spend between seventy-five to ninety percent of my time on R.F.R.A. related issues I had much less time to spend on those

matters. In short, the enactment of R.F.R.A. forced me to change from taking a proactive approach to the delivery of religious services and other religious matters to adopting a reactive stance because of the need to respond to the increased litigation and operational problems caused by R.F.R.A.

6. Unfortunately, there was no way to avoid the problems described above. Indeed, I have observed that we had more litigation and operational issues in institutions where we make the most efforts to accommodate the religious demands of inmates.

7. As part of my duties I corresponded with my counterparts in the correctional systems of other states. They uniformly indicated that they were also experiencing similar operational and litigation related problems resulting from R.F.R.A.

8. In addition to the matters discussed above, enactment of R.F.R.A. resulted in less training on other topics being made available to chaplains at the various institutions operated by O.D.R.C. That was due to the fact that the increased problems caused by R.F.R.A. required that such training during the last 2 years that R.F.R.A. was in effect be disproportionately devoted to R.F.R.A.

9. In addition to the matters discussed above, less time was spent on the delivery of religious services following the enactment of R.F.R.A. because religious services personnel were required to expend increased amounts of time dealing with security issues, as discussed below.

10. Following the enactment of R.F.R.A. the number of inmate requests for accommodations of specific religious practices increased dramatically. That required religious services personnel to not only examine the religious necessity of each requested accommodation, how to meet the particular requirements each religion

imposed with regard to the subject matter of each request and to work with security and other institutional staff to determine whether each requested accommodation presented operational concerns. Time spent on such matters could be spent on tasks necessary to facilitate the delivery of other, nonproblematic, religious services.

11. Of greater concern was the fact that many gangs have adopted "religious" postures to, obtain protection for their illicit activities. For example, a number of white supremacist groups claimed to be pursuing Christian Identity beliefs and the tenants of the Church Of The Creator in an effort to cover their otherwise illicit, and disruptive, activities. Some of these groups were being actively supported in their misuse of R.F.R.A. by gang cohorts outside of prison. The cumulative result of these activities was that religious staff were required to devote significant amounts of time to investigating the legitimacy these "religious" groups and their "religious" claims in order to assist security staff in dealing with the problems posed by those groups, thereby limiting the amount of time available to facilitate the delivery of religious services to the vast majority of inmates of faith.

12. Another disturbing and disruptive pattern which arose following the enactment of R.F.R.A. that adversely affected the delivery of religious services is the proliferation of new "religions" within the confines of Ohio's prisons. Inmates, realizing the potential protection afforded by R.F.R.A., established several new "religions" which purported to require such accommodations as group martial arts classes. Those "religious" groups have required additional attention from religious services personnel in order to verify the authenticity and requirements of such "religions". Time spent on such tasks is time that cannot be otherwise spent upon the delivery of religious services to inmates adhering to unquestionably established religions.

13. I was a co-signatory of the letter of July 17, 1996 To Ohio Attorney General Montgomery describing the impact of R.F.R.A. on O.D.R.C., a copy of which is attached as exhibit 1 hereto. I reaffirm the truth of the matters asserted in that letter.

Further affiant sayeth naught

/s/ David Schwarz
DAVID SCHWARZ

Sworn to before me and subscribed in my presence this 19 day of October, 2000

/s/ Daniel F. Callahan
NOTARY PUBLIC

[SEAL] DANIEL F. CALLAHAN
Notary Public, State of Ohio
My Commission Expires 11-30-04

July 17, 1996

Ms. Betty D. Montgomery
Attorney General of Ohio
30 East Broad Street, 17th Floor
Columbus, Ohio 43266-0581

Re: The Effect of the Religious Freedom Restoration Act of 1993 on the Delivery of Religious Services in Ohio's Prisons

Dear Attorney General Montgomery,

We are writing as the Directors of Religious Services of the Ohio Department of Rehabilitation and Correction to describe the effect of the Religious Freedom Restoration Act of 1993 ("RFRA") on the delivery of religious services in Ohio's prisons. Ironically, RFRA has adversely affected the delivery of such services by limiting both the quantity

and quality of staff time that can be devoted to religious matters.

Quantitatively, RFRA has forced religious services personnel to be diverted from tasks necessary to meet the spiritual needs of Ohio's inmates in order to respond to the significant legal and operational problems that have followed its enactment. Prior to RFRA, the Ohio Department of Rehabilitation and Correction ("ODRC") took a proactive approach to meeting the religious needs of inmates and we spent the vast majority of our time developing programming, recruiting and working with paid and volunteer providers of religious services and working with the religious community at large regarding the needs of inmates. We were seldom involved in litigation or problems of statutory compliance.

Unfortunately, that changed dramatically after the enactment of RFRA. We now spend approximately 75 to 90 percent of our time dealing with legal and operational problems directly related to RFRA. More specifically, we spend between 15 to 25 percent of our time working with attorneys from your office on lawsuits arising under RFRA. In addition, we spend between 60 to 70 percent of our time consulting with institutional staff regarding compliance with RFRA. The cumulative result of those developments has been that we are now forced to take a reactive approach to religious matters, as opposed to our traditionally proactive approach.

That dramatic change has two interrelated causes. The first is that RFRA's least restrictive means test requires us to effectively "set up and shoot down" all possible alternatives for dealing with "religiously motivated" requests for alterations of normal prison operations. Considering and

evaluating those mostly unworkable alternatives is tremendously time consuming. Time spent on those matters cannot be spent on facilitating the delivery of religious services of a non-disruptive nature.

Secondly, inmates and inmate groups have recognized, and abused, the fact that RFRA has shifted the burden of proof in religious matters. Since RFRA's enactment we have seen the proliferation of new, inmate created "religions" with such bizarre demands as group martial arts classes. In addition, we have seen a very large increase in requests for accommodations for previously unrecognized "requirements" of existing religions. Even more frighteningly, a number of inmate gangs, including racial hate groups, have claimed "religions" status in order to insulate their illicit and disruptive activities from scrutiny by correctional staff. Although most abuses are ultimately detected and dealt with, that only occurs after a tremendous investment of time by religious services staff who must investigate the "religious" nature of the groups or faiths at issue and the "religious" basis for the individual accommodations requested. Once again, time spent on such tasks cannot be spent on the actual delivery of the services to inmates adhering to unquestionably legitimate and sincerely held religious beliefs.

Not only is that division of resources very disruptive, it is also very wasteful. Most of the accommodations sought involve matters that were analyzed and rejected under Pre-RFRA legal standards. However, R.F.R.A. has required that those matters be revisited, effectively requiring that each problem be analyzed twice. Once again, time spent on those largely redundant tasks is time that cannot be spent on the delivery of religious services that are not subject to any dispute.

The effect of RFRA on the quality of staff time devoted to delivery of religious services has been equally, if not more, deleterious. Prior to the enactment of RFRA religious services personnel were usually able to maintain a "pastoral" type of relationship with individual inmates, regardless of the faith of the individual staff member or inmate. However, because of the increased number of increasingly bizarre demands and the increasing militancy of inmates making such demands, religious services staff are becoming more skeptical, thereby straining the relationship from the perspective of the staff members. Similarly, because staff are increasingly required to demand proof of the religious basis for requested accommodations and frequently forced to deny requested accommodations inmates are beginning to view religious services personnel more as "enforcers" of staff authority than as pastors. That hardly fosters the type of open, mutually accepting relationship that is vital to the effective delivery of religious services.

As the foregoing makes clear, RFRA has had a very significant and very adverse effect on the delivery of religious services in Ohio's prisons.

Sincerely,

_____	/s/ David Schwarz
Marloe Karlen	David Schwarz
Director of Religious Services	Director of Religious Services
North Region	South Region
Department of Rehabilitation and Correction	Department of Rehabilitation and Correction
1050 Freeway Drive	1050 Freeway Drive
Columbus, Ohio 43229	Columbus, Ohio 43229

EXHIBIT C

AFFIDAVIT OF KIM TUCKER

City of Washington :
: ss
District of Columbia :

Now comes Kim Tucker, having been first duly sworn, and states and affirms as follows:

1. I am Deputy General Counsel for the Florida Attorney General's office. I have held that position since March of 1996. As part of my duties in that position I oversaw a survey of state and territorial correctional agencies on the impact of the former Religious Freedom Restoration Act ("RFRA").

2. In July of 1996 I prepared a memorandum summarizing the results of that survey. A true, complete and accurate copy of that memorandum is attached as exhibit I hereto.

FURTHER AFFIANT SAYETH NAUGHT

/s/ Kim Tucker
KIM TUCKER

Sworn to before me and subscribed in my presence this 19th day of October, 2000

/s/ Warren Edward
NOTARY PUBLIC
My commission
expires 01-01-2005

EXHIBIT 1

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LEGAL AFFAIRS
THE CAPITOL
TALLAHASSEE, FLORIDA 32399-1050

ROBERT A. BUTTERWORTH
Attorney General
State of Florida

MEMORANDUM

TO: Robert A. Butterworth
Attorney General

Harry Singletary
Secretary
Florida Department of Corrections

FROM: Kim Tucker
Deputy General Counsel

DATE: July 19, 1996

RE: Preliminary Results of the RFRA Survey of All States: The Impact of the Religious Freedom Restoration Act on State Correctional Systems

This is to summarize the preliminary results of the national survey on the impact of the Religious Freedom Restoration Act (RFRA) on state correctional systems.

As you know, RFRA's mandated abandonment of the constitutional standard for review of free exercise of religion claims in the prison context, enunciated by the U.S. Supreme Court in *O'Lone v. Estate of Shabazz,* 482 U.S. 342 (1987), has had a tremendously negative impact in Florida. RFRA has resulted in a significant increase in the number of claims for exemptions from security regulations and requests for special privileges. It has also resulted

in an increase in the number of cases brought claiming the right to exemptions under this Act, increased the cost in staff and financial resources to evaluate and litigate such claims, and has required Florida as a State to relitigate claims previously won even under the Eleventh Circuit's pre-*O'Lone* "strict scrutiny" standard. What is most distressing is the nature of the recent prison actions. If anything, the recent RFRA claims are more bogus or bizarre than our previous experience.

At the Spring meeting of the National Association of Attorneys General (NAAG), in Washington, D.C., it became painfully apparent that other states were experiencing similar deleterious consequences from the application of this Act in the prison context. This issue was raised by the Attorney General to both the President and Attorney General Janet Reno. General Reno responded by requesting additional information on the costs and consequences of RFRA in prisons and jails. As a result, we undertook the process of surveying all states, the District of Columbia, and the U.S. Territories and Commonwealths on the impact of RFRA on their correctional systems. Surveys were sent by NAAG to the Attorneys General and Secretary Singletary sent surveys to each of the Directors of correctional systems in the States and Territories, as well as several of the larger jail systems. Pursuant to your direction, I am managing the collection and assessment of the survey responses.

I am pleased to report that of the 56 States and Territories to which the survey was sent, we have received responses from the Attorneys General and Department of Corrections in 33, so far, and we have been provided assurances from the others that their responses are in progress.

As discussed more fully below, RFRA has had a very significant, and very adverse, impact upon corrections systems in three major ways. First, RFRA has been utilized by racial hate groups and other inmate gangs to insulate their activities from the oversight and control of corrections officials. Second, there has been a tremendous increase in the number of lawsuits and internal demands for "religiously motivated" alterations of prison practices, creating significant burdens on the resources of corrections systems, state attorneys general, and the courts. The enactment of RFRA has resulted in the proliferation of claims for exemptions from prison security regulations and requests for special privileges, grounded in obscure or previously little-known "religions", including: Wicca, Satanism, Odinism, Asartu, and Luciferianism. Third, the enactment of RFRA has been followed by a reduction in the availability of religious programming in some state correctional systems.

Perhaps the most prevalent and disturbing pattern is the use of RFRA by inmate groups to insulate their activities from regulation by prison officials. Inmate groups and gangs have recognized that RFRA's "least restrictive means" test makes it very difficult for corrections officials to restrict activity allegedly motivated by religion and, consequently, have claimed religious status for their groups and religious motivation for their actions. Where previously prison officials successfully prevented gangs from wearing colors or emblems, these same groups now assert the right to wear special clothing or medallions as expressions of religious freedom. Since the federal courts are loathe to challenge the sincerity of religious claims and because it is difficult to overcome the "least restrictive means" test in the assertion of this type of claim, this

providing inmates an avenue for circumventing the legitimate security concerns of correctional institutions and encouraging the proliferation of gangs in prisons. Like Florida, most states responding to the survey have indicated that this pattern is being employed by racial hate groups, such as the Aryan Nation, as well as street gangs.

A second common and disturbing pattern is a tremendous drain on the resources of state correctional systems, State Attorneys General, and the courts. Most states have reported a significant increase in the number of inmate lawsuits asserting religious claims since the enactment of RFRA. There have been particularly noticeable increases in the States of Arizona and New York. Most lawsuits involve issues settled prior the enactment of RFRA, under the analysis established in *O'Lone*. This mostly redundant litigation requires correctional systems to divert employees from their normal tasks, requires State Attorneys General to devote significant staff to defend, and ties up court dockets across the country, in both state and federal courts.[1] Similarly, most of the responding states have noted significant increases in the number, belligerency, and unusual nature of inmates' internal demands for "religiously motivated" alterations to and exemptions from

[1] Not only has there been a significant increase in the free exercise lawsuits since the enactment of RFRA, conversations with Assistant Attorneys General and staffs of Department of Corrections of other States has indicated that the individual cases are more time consuming and costly than prisoner suits under the previous Constitutional standard. During this year's NAAG Corrections Conference, in Albuquerque, NM, and in a recent NAAG conference call on RFRA, attorneys from several States related that courts are reluctant to dispose of such cases on summary judgment or similar grounds because of factual and legal questions about the religious necessity of the requested "accommodations."

prison regulations. The large number of those requests, together with RFRA's "least restrictive means" requirement, are resulting in very significant burdens on the already overburdened corrections staffs due to the need to investigate the religious necessity and security impact of each of the growing number of demands.

Finally, and most ironically, the survey indicates that RFRA has actually resulted in a decrease in religious programming for most inmates in some States. The increased demands on staff time, described above, means that prison chaplains have less time to actually deliver religious services. In addition, increased demands for time and space by adherents to such previously obscure "religions" as Satanism, Wicca, Asatru, and Odinism[2] has resulted in less time and space being available for adherents of wide-spread, mainstream religions. Moreover, the increased stridency of inmate demands and doctrinal conflicts between inmates and potential volunteers has resulted in less programming being available from outside groups, who had previously serviced the inmate populations.

[2] Prior to enactment of RFRA, these "religions" were rare or unheard of in the prison context. The survey indicates, however, that inmate claims of conversion to these "religions" has proliferated since enactment of RFRA. Similarly, RFRA has spawned a surfeit of inmate claims for special privileges and exemptions, allegedly grounded in the Native American religion; however, overwhelming these claims are asserted by inmates with no previous or legitimate claim to tribal affiliation. (e.g. claims of Virginia inmates Randall "Lone Wolf" Mullins and William "Two Eagles" Martin to the right to possess feathers from endangered eagles, despite federal law prohibitions against possession of such feathers by individuals who do not have an identification number from the Bureau of Indian Affairs. Ironically, the Justice Department has intervened in this case on the inmates' behalf.)

Finally, some States have become so frustrated with the difficulties resulting from RFRA that they have eliminated all State-funded religious programming in their prisons.[3]

AFFIDAVIT OF TODD MARTI

County of Franklin :
: ss.
State of Ohio :

Now, comes Todd Marti, having first been duly sworn, and states and affirms as follows:

1. He was lead counsel for the Defendants in the case of *Syder v. Voinovich, et al.*, Case No. C2-94-536 (S.D. Ohio).

2. Since January 8, 1996, the Defendants in *Syder v. Voinovich, supra*, made key managerial staff, other employees and contract provides of both the Ohio Department of Rehabilitation and Correction ("ODRC") and the Ohio Department of Youth Services ("DYS") available for approximately 85.5

[3] The Departments of Corrections in Oklahoma and Colorado have discontinued State-funded Chaplaincy programs. Not all reductions in services to mainstream religions are intentional. For example, officials in Wyoming felt compelled by RFRA to allow a group of "Luciferians" to have an unsupervised service in the prison chapel. In an apparent burst of religious enthusiasm, the Luciferian inmates burned Christian hymnals and Bibles, making the books unavailable for Christian inmates to use, causing substantial smoke damage to the Chapel (thus, making it unavailable for general use by other inmates until repaired), and, obviously, creating a significant safety hazard to the life and safety of all inmates and staff within the institution.

hours of depositions. The deponents and time involved in actually attending those depositions are accurately set forth in Exhibit 1 hereto. In addition to the time spent actually attending those depositions, the deponents spent a total of approximately 40 hours preparing for and traveling to and from those depositions.

3. In addition to the 26 requests for production of documents set forth in each of the 26 sets of interrogatories served by the Plaintiffs, the Plaintiffs have made 287 additional requests for documents since January 8, 1996, in *Syder v. Voinovich*, *supra*.

Further affiant sayeth naught.

/s/ Todd Marti
TODD MARTI

Sworn to before me and subscribed in my presence this 23 day of October, 2000.

SEAL

/s/ Stuart A. Cole
NOTARY PUBLIC

STUART A. COLE
ATTORNEY AT LAW
NOTARY PUBLIC – STATE OF OHIO
MY COMMISSION HAS NO
EXPIRATION

Exhibit 1

DEPONENT	POSITION	DATE AND TIMES OFF DEPOSITION	DURATION OF DEPOSITION
Christine Money	Warden, Ohio Reformatory for Women	February 5, 1996 10:00 a.m. - 4:00 p.m.	6 hours*
Arthur Tate	Warden, Belmont Correctional Institution	February 7, 1996 9:00 a.m. - 3:00 p.m.	6 hours
John Littlefield	Director of Education, Department of Youth Services	February 8, 1996 9:00 a.m. - 6:30 p.m.	9.5 hours
Rev. Marloe Karlen	Religious Services Director, North Region of O.D.R.C.	February 12, 1996 9:00 a.m. - 6:30 p.m.	9.5 hours
Rev. David Schwarz	Religious Services Director, South Region of O.D.R.C.	March 21, 1996 9:00 a.m. - 6:30 p.m.	9.5 hours
Allen Lazaroff	Warden, Orient Correctional Institution	April 5, 1996 9:00 a.m. - 6:10 p.m.	9 hours
Curtis Wingard	Warden, Madison Correctional Institution	April 9, 1996 7:30 a.m. - 1:30 p.m.	6 hours
Frank Vloch	Chaplain, Mansfield Correctional Institution	April 12, 1996 8:00 a.m. - 5:30 p.m.	8.5 hours
Thomas Sunhawk	Contract Chaplain Orient Correctional Institution	April 29, 1996 9:30 a.m. - 5:45 p.m.	8.25 hours
Gregory Trout	Chief Counsel of O.D.R.C.	May 15, 1996 9:45 a.m. - 10:45 p.m.	1.75 hours
Matthew Myer	Security Threat Group Coordinator O.D.R.C.	June 19, 1996 9:00 a.m. - 5:30 p.m.	8.5 hours
Reginald Wilkinson	Director O.D.R.C.	June 28, 1996 9:00 a.m. - 12:00 p.m.	3 hours*

*These deposition have not yet been concluded, but instead were only continued to allow the Plaintiffs to conduct further interrogation of the deponent.

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EXHIBIT D

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Exhibit E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Steve Syder, et al.,

Plaintiffs,

-V-

Case No. C-2-93-0074
C-2-94-0536
C-2-94-0795
C-2-94-1105
C-2-95-0056
C-2-95-0234
C-2-95-0290
C-2-95-0422
C-2-95-0429
C-2-95-0483
C-2-95-0566
C-2-95-0694
C-2-95-0695
C-2-95-1028
C-2-95-1073

JUDGE SMITH

Governor George V. Voinovich, et al.,

Defendants.

ORDER

(Filed Mar. 31, 1998)

Plaintiffs, state prisoners, bring claims under the Religious Freedom Restoration Act of 1993 ("RFRA") and the Free Exercise Clause of the First Amendment to the United States Constitution. Plaintiffs assert that

defendants are violating their rights by requiring them to cut their hair pursuant to prison regulations, in derogation of plaintiffs' right to exercise their belief in Native American Religion.

The U.S. Supreme Court struck down RFRA as unconstitutional in *Boerne v. Flores*, 117 S.Ct 2157 (1997). Furthermore, the United States Court of Appeals for the Sixth Circuit has held that prison hair length regulations are rationally related to legitimate penological interests and therefore do not violate the First Amendment's Free Exercise Clause. *Pollock v. Marshall*, 845 F.2d 656, 658-59 (6th Cir.), *cert. denied*, 488 U.S. 987 (1988).

Given the conclusive nature of *Boerne* and *Pollock*, further litigation of these cases would be a waste of the court's and parties' resources. The Court finds that in light of the above authorities, the complaints are deficient as a matter of law.

The Court GRANTS the motion of plaintiffs' counsel to withdraw (Doc. 59 in Case No. C-2-94-536).

The Court DENIES the pending motions to join (Docs. 53, 55, and 65 in case No. C-2-94-536).

The Clerk shall reopen these cases to enter final judgements in these actions, in favor defendants, and against plaintiffs, dismissing these actions with prejudice.

The Clerk shall remove these cases from the Court's pending cases and motions lists.

IT IS SO ORDERED.

/s/ George C. Smith
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT

EXHIBIT F

AFFIDAVIT OF JEFFREY MATHEW

County of Pickaway :
: ss
State of Ohio :

Now comes Jeffrey Mathew, having been first duly sworn, and states and affirms as follows:

1. He is Deputy Warden for Indirect Services at the Circleville Juvenile Correctional Facility. He has held that position since September 2000. Prior to that time he was the Deputy Warden for Administration at the Madison Correctional Institution. Prior to taking that position he was an investigator for the Ohio Department of Rehabilitation and Correction ("ODRC"), assigned to the Legal Services Office of ODRC on a full-time basis to assist the Office of the Ohio Attorney General in litigation against ODRC and its employees. Prior to undertaking that assignment, he has worked for ODRC as, *inter alia*, a Deputy Warden, as an Assistant Chief Inspector, and as an Administrative Assistant to the Warden. He has more than 23 years of experience in corrections.

2. As part of his duties, he worked with officials at the Central Office of ODRC, with officials at each of ODRC's 28 correctional institutions and with ODRC's training academy in order to gather the

information sought in the interrogatories and requests for production of documents served or otherwise made by the Plaintiffs in *Syder v. Voinovich, et al.*, Case No. C2-94-536 (S.D. Ohio), a case brought under the Religious Freedom Restoration Act. He personally spent more than 125 hours gathering that information. In addition, he spent approximately 150 hours organizing, copying, numbering, and performing other tasks in connection with the documents requested in order to make those documents useable.

3. In order to gather the information necessary to respond to the Plaintiffs' interrogatories and document requests in *Syder v. Voinovich, supra,* he made three complete surveys of ODRC's 28 correctional institutions. and a number of follow-up inquiries with various of those institutions. In addition he made searches at the Central Office at ODRC and reviewed materials from ODRC's training academy. In order to obtain the information requested, he enlisted the help of key administrative staff at those institutions and offices. Based upon his communications with those staff members and his own experience in responding to similar surveys in the past, he estimates that employees of ODRC had to spend approximately 600 hours of time to gather the information prepared to date. *That is an extremely conservative estimate of time spent gathering that information.* Furthermore, that estimate does not include the time spent by ODRC employees in responding to the large number of separate requests for documents made by the Plaintiffs in *Syder v. Voinovich, supra,* in addition to those set forth in the Plaintiffs' sets of interrogatories and requests for production of documents.

Further affiant sayeth naught.

/s/ Jeffrey Mathew
JEFFREY MATHEW

Sworn to before me and subscribed in my presence this 18th day of October, 2000.

/s/ Deborah S. Turner
NOTARY PUBLIC

[SEAL] DEBORAH S. TURNER
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION EXPIRES JAN. 4, 2001

EXHIBIT G

AFFIDAVIT OF SHARON SUMNER

County of Franklin :
: ss
State of Ohio :

Now comes Sharon Sumner, having been first duly sworn, and states and affirms as follows:

1. She is a Paralegal assigned to the Corrections Litigation Section of the Office of the Ohio Attorney General ("O.A.G."). As a result of her duties in that position she has personal knowledge of the matters set forth herein.

2. As part of her job duties she has conducted an inventory of cases filed by Ohio inmates under the Religious Freedom Restoration Act of 1993 ("R.F.R.A.") for use in a national survey of the impact of R.F.R.A. on prison administration.

3. The Ohio Attorney General is currently defending the Ohio Department of Rehabilitation and Corrections ("O.D.R.C.") and its employees in 75 cases initiated by inmates under the R.F.R.A. 53 of those cases involve the validity of the Grooming Code established by Ohio Administrative Code §5120-9-25(F). The vast majority of those 75 R.F.R.A. cases involve types of claims that had previously been resolved against inmates, prior to the enactment of R.F.R.A.

4. Since the enactment of R.F.R.A. the O.A.G. has had to defend against R.F.R.A. claims in a wide variety of state and federal courts, including the United States Supreme Court, the United States Court of Appeals for the Sixth Circuit, the United States District Court for the Southern District of Ohio in Cincinnati and Columbus, the United States District Court for the Northern District of Ohio in Akron, Cleveland and Toledo, the Ohio Supreme Court, the Ohio Court of Appeals for the Third Appellate District, the Ohio Court of Appeals for the Fourth Appellate District, the Common Pleas Court for Marion County, the Common Pleas Court for Montgomery County, the Common Pleas Court for Ross County, the Common Pleas Court for Scioto County and the Common Pleas Court for Warren County.

Further affiant sayeth naught.

/s/ Sharon Sumner
SHARON SUMNER

Sworn to before me and subscribed in my presence this 12th day of July 1996.

/s/ Joshua T. Cox
NOTARY PUBLIC

JOSHUA T. COX
Notary Public, State of Ohio
My Commission Has No Expiration Date
Section 147.03 O.R.C.

EXHIBIT H

AFFIDAVIT OF SUSAN CALDERON

County of Franklin :

State of Ohio :

Now comes Susan Calderon, having been first duly sworn, and states and affirms as follows:

1. I was a paralegal for the Corrections Litigation Section of the Ohio Attorney General's office from September of 1998 through September of 2000. As a result of my duties in that position I have personal knowledge of the matters set forth herein.

2. As part of my duties in the above described position I was asked to review the disciplinary records of each member of the plaintiff class in the case of *Miller, et al v. Wilkinson, et al,* Case No. C2-98-275 (S.D. Ohio) identified by the Plaintiffs. I prepared a chart summarizing the results of that review, a true complete and accurate copy of which is attached as exhibit 1 hereto.

3. The chart attached as exhibit 1 sets forth the name of each class member identified by the Plaintiffs in a column going down the left side of

the chart. The next column to the right identifies the Bates stamp numbers of the summary of each plaintiff's prison disciplinary history The next eleven columns to the right refer to various subsections of Ohio Admin. Code § 5120-9-06(E), referenced by the subdivision of that regulation involved and a brief description of the conduct prohibited by each subsection. The numbers in each column for each class member refer to the Bates stamp numbers of the documents evidencing disciplinary proceedings regarding each violation or alleged violation.

FURTHER AFFIANT SAYETH NAUGHT

/s/ Susan I. Calderon
SUSAN CALDERON

Sworn to before me and subscribed in my presence this 23rd day of October 2000.

/s/ Maria C. Jenkins
Notary Public

MARIA C. JENKINS
NOTARY PUBLIC, STATE OF OHIO
MY COMMISSION
EXPIRES OCT. 1, 2001

Miller, et al. v. Wilkinson, et al.
Case No.
RIB FILES

Name		RIB Record	(4) Creating a Disturbance	(5) Fighting	(12) Threats	(14) Disrespect to an Officer	(16) Act Which Constitutes Threat to Security	(17) Aiding and Abetting Class II Violation	(19) Any Act Considered Felony or Misd	(24) Lying	(31) Gang Activity Involvement	(32) Self-multilation/ Tattooing	5120-9-37 Group Activity
Dattilo 301-729		1321 1330 1362 1371 1379				1391-1398				1336-1343		1355-1361	
Hall 277-848		1431	1432-1434									1432-1434 1456-1463	
Holland 319-713		1467				1480-1487			1475-1479				
Howington 315-531		1495 1509											
Lemasters 276-290		1529	1537-1546		1559-1562	1537-1546 1550-1558							
Malin 326-032		None											
Parish 251-744		1586 1591 1630 1640 1669 1781 1792 1823 1843 1858				1726 1859-1867		1639 1670-1677		1641-1649 1825-1828			
Schrock 285-016		1868	1882-1892					1872-1875					
Stump 253-213		1896						1960-1963				1942-1944 1984-1987	
McClellan 288-778		1988				1989-1990 2008-2010 2013-2014 2017-2018 2021-2022							

Name		RIB Record	(4) Creating a Disturbance	(5) Fighting	(12) Threats	(14) Disrespect to an Officer	(16) Act Which Constitutes Threat to Security	(17) Aiding and Abetting Class II Violation	(19) Any Act Considered Felony or Misd	(24) Lying	(31) Gang Activity Involvement	(32) Self-multilation/ Tattooing	5120-9-37 Group Activity
						2047-2048 2050-2051							
Bailey, Michael 141-957		2086 2160		2054-2083		2087-2157			2054-2083				
Dauterman, James 226-727		2178											
Riling, Kenneth 175-113		2179- 2180	2217-2226 2236-2246 2386-2396	2236-2246 2253-2266 2291-2306 2321-2335		2217-2226		2271-2290 2349-2352		2271-2290			
Culp, (E)rick 258-184		2397				2399-2409					2520-2521		
Allen, Jason 313-684		2545		2557-2570	2612-2626					2627-2635			
Hampton, Frank 245-095		2642		2775-2789	2686-2687 2725-2733	2717-2718 2725-2733		2722-2724	2686-2687	2671-2679 2748-2770	2685		
Taylor, Paul 334-355		n/a 2790											
Blank, Randall 325-409		n/a 2791- 2792											
Allen, David 309-572		2793 2808											
Klinger, 319-449		2829											
Parker, 340-729		2852 2856 2869				2836-2848			2849-2851 2853-2855 2857-2868 2870-2873	2836-2848			
Salter, James 336-706		2874 2883				2875-2882							
Vargo, 301-052		None		2916-2924	2897-2905 2925	2925							
Blankenship, Darryl 295-771		2926											
Miller, John William 199-891		2941 2963 2984	2985	2946-2962 2964 2975-2983	2946-2962 2964 2967 2987?	2990-2993 2998-2999							

Name		RIB Record	(4) Creating a Disturbance	(5) Fighting	(12) Threats	(14) Disrespect to an Officer	(16) Act Which Constitutes Threat to Security	(17) Aiding and Abetting Class II Violation	(19) Any Act Considered Felony or Misd	(24) Lying	(31) Gang Activity Involvement	(32) Self-multilation/ Tattooing	5120-9-37 Group Activity
Detty, Mark 336-829		3000										3020-3022	
Semenchuck, Allen 156-157		3075	3135-3143	3053-3054 3067-3074 3118-3128 3135-3143			3135-3143		3035-3052 3118-3128				
Millsaps, William 281-588				3183-3203									
Ferrell, 272-486											3228-3235 3236		
Blankenship, Randall 164-826				3255-3256									
Bedzyk, 204-234			3290-3297	3290-3297	3298-3300								
Baldock 140-527		3305- 3306	3496-3498			3414-3424 3496-3498 3535-3545		3317-3318 3330-3331 3460-3461 3499-3501 3512-3515 3581-3582		3316		3346-3352	
Gromnicki 276-765		3601											
Hart, 360-286													
Roosevelt, 303-591		3676											
Sloan, L 247-161		3691- 3692 3704- 3705 3714 3737 3751 3754 3770	3828-3829	3830-3836			3756	3801-3802 3855-3857			3815-3827		
Sparling 336-155			3905-3907 3940-3954	3905-3907		3926-3939 3940-3954		3898-3904				3883 3898-3904 3910-3917 3918-3924	

Name		RIB Record	(4) Creating a Disturbance	(5) Fighting	(12) Threats	(14) Disrespect to an Officer	(16) Act Which Constitutes Threat to Security	(17) Aiding and Abetting Class II Violation	(19) Any Act Considered Felony or Misd	(24) Lying	(31) Gang Activity Involvement	(32) Self-multilation/ Tattooing	5120-9-37 Group Activity
Spradling 251-925		3955 3971 4017	3979-3980		3985-3987				3973-3978		3967-3970		
Ritchie 317-294		4065 4082 4121	4055-4064 4074-4083			4031-4041 4055-4064 4074-4083				4087-4090 4113-4122			
Kaufman 375-495		4147				4152-4155							
McGuire 314-489		4156	4174-4193	4255-4265		4157-4169 4174-4193 4276-4284							
Williamson, 275-009		4294	4295-4298	4300-4301									
Slider, 157-322			4306-4308			4306-4308							
Howard, 234-577		4489- 4491	4338-4341 4392-4402 4518-4521	4342-4363 4378-4389 4392-4402 4410-4411 4548-4554	4522-4524	4408-4409 4412-4413			4342-4363 4378-4389 4428-4440		4513-4514		
Rose, 337-221		4569					4574-4584						
Mitchell, 361-584													
Crace 347-558		4733 4746 4756 4777 4796 4823 4844 4849 4861 4870 4893		4778-4795 4932-4942 4950 5008-5014 5023-5025 5096-5104	4932-4942 4950	4747-4749 4798-4801 4831-4848 4923-4931 4944-4945 4977-4989 5027-5042		5044-5048		4759-4776 4802-4804 4850-4851 4858-4869 4871-4875 4880 4886 4990 5044-5048 5087-5089		4731-4745 4859 4888	
Elliott, James 360-995				5122-5129					5163-5177				
Bauman 325-571								51935195					

Name		RIB Record	(4) Creating a Disturbance	(5) Fighting	(12) Threats	(14) Disrespect to an Officer	(16) Act Which Constitutes Threat to Security	(17) Aiding and Abetting Class II Violation	(19) Any Act Considered Felony or Misd	(24) Lying	(31) Gang Activity Involvement	(32) Self-multilation/ Tattooing	5120-9-37 Group Activity
Richendollar, Joseph 380-009			5214-5217	5235-5251		5214-5217							
Matz, David 331-280					5300-5307 5321-5322					5285-5291			
Rine, Gerald 198-582				5338-5345		5323-5332							
Lower, Bruce 203-800				5346-5362		5399-5416				5399-5416		5380-5387	
Hayes, Carl 269-235													

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Exhibit I

AFFIDAVIT OF MATTHEW MEYER

COUNTY OF FRANKLIN:

ss: :

THE STATE OF OHIO:

Now comes Matthew Meyer, having been first duly sworn, and states and affirms as follows:

1. He is the Security Threat Group/Investigation Coordinator for the Ohio Department of Rehabilitation and Correction ("ODRC") and has held that position since December of 1994. Among his duties in that position are to monitor and take actions to minimize Security Threat Groups ("STG") activity within ODRC's 31 correctional institutions and facilities and among inmates under the jurisdiction of the Ohio Adult Parole Authority. In addition to his Bachelors Degree in Criminal Justice and Masters Degree in Public Administration he has participated in extensive formal training regarding STG activity. Among the courses he has taught or attended are the U.S. Justice Department's course on Asian organized crime, the Annual Conference of the Midwest Gang Investigator's Association (three times), the Major Gang Task Force Conference (three times) and courses and conferences presented by Central State University, the Ohio State Highway Patrol, the Ohio Attorney General and ODRC. He is a member of the Midwest Gang Investigator's Association, Advisory Board Member for the National Major Gang Task Force and the Wood County Gang Task Force. As a result of his duties with those organizations he has personal knowledge of the matters set forth herein, unless specifically noted.

2. Gangs are commonly referred to as Security Threat Groups ("STG") by corrections professionals. In general, STG activity is a very serious problem within ODRC's institutions. It is a significant cause of violence between inmates as a result of intra and inter-gang disputes. STG activity within the correctional setting creates alternate power structures that directly threaten the security of the institution through the commission of Ohio statutory law violations, violations of rules of inmate conduct and resistance to the authority and orders in prison staff. This conduct facilitates drug dealing, escape attempts, assaults, etc. STG [sic] exist in prisons for power, and power is obtained by maintaining structure and hierarchy. Such alternate power structures pose a direct threat to ODRC's ability to maintain safety and security within its prisons.

3. In addition to the general problems described in paragraph (2) above, STGs present a number of specific operational problems because they:

   - Heighten tension between inmates
   - Often result in "arms races" between rival groups
   - Increase the risk of inmate on inmate violence
   - Increase the risk of injury to Staff both in terms of assaults from inmates and in breaking up inmate on inmate altercations
   - Require the alteration of normal operational patterns in order to separate inmates belonging to rival groups.
   - Require that certain group leaders be segregated from the general population in order to prevent the spreading of the group

   - Interfere with rehabilitation by reinforcing anti-social values and behavior patterns

4. The problems described above are both aggravated by and aggravate the problems that result from overcrowding.

5. Aryan and white supremacist groups are present in Ohio and within Ohio's prisons. The Aryan Nation group is one of the best-organized and most dangerous white supremacist organizations and has a significant presence in Ohio. Outside the prison, they have been linked to *inter alia*, Peter "Commander Pedro" Langham, Chevie and Chenye Kehoe and the Greathouse organization. Peter Langham headed the group that organized and executed bank robberies across the Midwest. Chevie and Cheyne Kehoe were involved with a shoot out with Ohio law enforcement officers, the murder of an Arkansas gun dealer and the distribution of illegal firearms. The Greathouse organization was a street gang that operated on the south side of Columbus, Ohio and was responsible for numerous acts of violence, including at least one killing.

6. The Aryan Nation organization is one of the most organized of the white supremacist organizations and has a national presence. It is one of the driving intellectual forces in the white supremacist movement. For example, the Aryan Brotherhood street/prison gang uses Aryan Nation ideology as an organizing and unifying credo. Because of that corrections employees often confuse the Aryan Nation and the Aryan Brotherhood.

7. White supremacist STGs have been involved with violent, and sometime fatal, disturbances at various facilities operated by the Ohio Department of Rehabilitation and Correction ("ODRC"). They played a

part in the riot at the Southern Ohio Correctional Facility in 1993, which resulted in 11 deaths. They were involved in the murders of inmates at the Madison and Trumbull Correctional Institutions. They have played central roles in escapes or attempted escapes from the Lebanon, Madison and Mansfield Correctional Institutions. Such groups constitute the largest category of STGs within ODRC's inmate population and the monitoring and suppression of their activities is a high priority of ODRC.

8. White supremacist STGs present particular difficulties because:

   - They cause negative reactions from African-American inmates, Hispanic inmates and inmates belonging to other racial minorities, many of whom belong to rival STGs. Indeed, it has been recognized that violence within an institution increases when white supremacists STGs increase their visibility within that institution.
   - They have strong support from outside of the prison system from groups and individuals who are often themselves involved in illegal activities, as described above.
   - They have higher levels of internal cohesion.
   - Individual members are usually more committed to the group than are members of other types of STGs.
   - Individual members tend to be more sophisticated and hence harder for corrections and law enforcement officials to detect and control.

9. The Church of Jesus Christ Christian ("CJCC") is part of the Christian Identity movement and is closely affiliated with the Aryan Nation group described

above. The mailing address of the national headquarters of the CJCC is the same as the mailing address for the national headquarters of the Aryan Nation. Many of the members of the CJCC are active members of the Aryan Nation. Many Aryan Nation members and local organizations use the teachings of the CJCC as the ideological basis for their activities.

10. Because of those close connections between the CJCC and the Aryan Nation and the demonstrated dangerousness of the Aryan Nation, ODRC closely monitors the contacts between the CJCC and inmates in its custody and the actions of inmates who claim allegiance to the CJCC.

12. One of the most important tools utilized by ODRC to limit STG activity is the suppression of STG "identifiers." Identifiers are non-verbal means by which STG members indicate that they are affiliated with a particular STG. These identifiers consist of, *inter alia*, colors of clothing, tattoos and brands, manner of dress, graffiti, hand signs, hair style and length and certain behavioral patterns. It is important to suppress the use of identifiers in a prison environment because identifiers allow members of antagonistic STGs to identify each other for purposes of violent altercations. The absence of identifiers also makes it more difficult for new transferees to a particular prison to identify potential gang cohorts, a concern that has become more important as inter-prison transfers have increased in frequency. In addition, the suppression of identifiers is important because use of identifiers build unity and cohesiveness among STG members, thereby aggravating the dangers resulting from alternate power structures as described above.

13. STGs will often use literature from outside of prison as an organizing tool because it shows that the group has stature outside of the prison. In addition, the

possession of such literature can be used a form of identifier.

14. The very presence of white supremacist literature, apart from its content, causes problems in prison because it can be used as a STG identifier. Such literature identifies inmates possessing it with white supremacist groups and the views they espouse. Inmates possessing that literature can use it to identify their beliefs to like minded inmates in much the same ways that street gangs use "colors" and other identifiers. Inmates belonging to rival groups are likely to similarly perceive possession of such literature as an identifier, albeit for much less friendly purposes. Because of those facts corrections officials seek to limit the entrance of such literature into prisons apart from its content. Prisons are viewed by white supremacist STG's as particularly fertile recruiting grounds.

15. The materials withheld from inmate John Gerhardt, 269-497, ("Gerhardt") were properly withheld because:

    - Each issue contained certain symbols that are recognized identifiers for the Aryan Nation.

    - The very presence of those publications, aside from their content, could create tension and possibly inspire violence between inmate [sic] of other races.

16. STGs frequently use religion to facilitate and cover their illicit activities. They do so for several reasons. First, inmates who are otherwise separated can come together to attend congregate religious activities, where they can plan and execute the operations of their STG. Second, the legal protections that surround religious activity make it harder for prison staff to regulate or prevent actions purportedly taken for

religious reasons. For example, a STG operating in the District of Columbia's Lorton prison used "religious" activities to facilitate prostitution, drug dealing and the production and distribution of pornography within that prison. See EX. A hereto.

17. White supremacist STGs will often claim religious status or manipulate religion in order to insulate their activities from official action or otherwise further the interests of their groups. Among the ways that they seek to do so are requesting group religious services so that inmates otherwise separated in different parts of a prison may physically come together to further their group activities. In addition, such services can be used as a recruiting tool because they provide a readily available and fairly visible means for prospective members to get in contact with the group. In effect, such services have the potential to become a type of STG identifier. Because of those realities, and other considerations, ODRC will not let such groups hold separate congregate worship services but instead only permits inmates claiming to adherer to a particular faith to attend generic worship services for each of the major faith groups (ie, Islam, Catholicism, Protestant Christianity) within which his specific creed falls, which are attended by other inmates and closely monitored by staff.

Further affiant sayeth naught.

/s/ Matthew Meyer
MATTHEW MEYER

Sworn to before me and subscribed in my presence thi, 16th day of November 1999.

/s/ Karen L. Wolfe
NOTARY PUBLIC

[SEAL]

Karen L. Wolfe
Notary Public, State of Ohio
My Commission Expires
12/27/99

Exhibit A

18TH STORY of Level 1 printed in FULL format.

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The Washington Post

September 27, 1996, Friday, Final Edition

SECTION: A SECTION; Pg. A01

LENGTH: 949 words

HEADLINE: Ring Used Religion as Cover to Sneak Drugs Into Lorton

BYLINE: Charles W. Hall, Washington Post Staff Writer

BODY:

A drug ring posing as a church group smuggled cocaine and prostitutes into the Lorton Correctional Complex and filmed a pornographic video in the prison chapel, using a law protecting religious freedom to avoid scrutiny by guards, officials said yesterday as they announced more than 30 arrests.

Posing as members of the Moorish Science Temple, a religion popular in jails and prisons, the group exploited what officials called a gaping loophole in Lorton's security.

Because of a 1993 federal law protecting religious freedom of prisoners, members were allowed to have private visits with inmates at virtually any hour and were subjected to only minimal searches, officials said. The members also routinely intimidated guards by threatening to sue them, they said.

"We had correctional officers who were afraid to do their jobs," said D.C. Corrections Director Margaret A. Moore, who announced several measures to tighten control of prison visits at a news conference in Alexandria.

U.S. Attorney Helen F. Fahey said she hoped the arrests will warn visitors not to smuggle drugs into Lorton. She emphasized that the crackdown was not intended as an attack on any religious group.

"This case is not an indictment of the Moorish Science Temple," Fahey said. "It is an indictment of individuals who exploited a religious exemption to smuggle drugs."

A. Harvin-Bey, grand sheik of Moorish Science Temple No. 74 in the District, condemned those involved in the alleged crimes at Lorton.

"We don't condone anything like that, and if they are members [of the Moorish Science Temple], then justice should take its course," Harvin-Bey said. "It's sad that anyone would misuse any religious organization. That's not what our teachings promote."

Harvin-Bey said that religion has attracted millions of worshipers across the country. There are about 10 temples in the Washington area, he said. The religion, which is open to all races, focuses on the ancestry of American slave, saying they descended from Moabites who formed the Moorish empire.

A grand jury issued 38 secret indictments Tuesday. About 6 a.m. yesterday, federal agents and local police

officers began arresting suspects. By 6 p.m., seven remained at large, said William Megary, acting special agent in charge of the FBI's Washington field office.

Officials said 21 suspects were from the District, eight from Maryland, two from Virginia and seven had unknown addresses.

All of the defendants were charged with cocaine distribution offenses, and two – Nathaniel Pleasant Bell and Karima Cook, both of Baltimore – also were charged with transporting women across state lines for prostitution.

Federal prosecutors and prison officials said they had suspected for several years that illegal activities were occurring during some religious services. Outsiders seeking to attend religious services in the complex had only to fill out a card, and prison officials did not verify whether they were church members, Moore said.

In addition, according to papers filed yesterday in U.S. District Court in Alexandria, such visitors received numerous exemptions from standard security procedures at the District's 6,000-inmate prison complex in southern Fairfax County.

In January, officials said, a cooperative inmate gave investigators vital access to the drug ring.

Posing as a drug seller in the maximum-security unit, the inmate received drugs brought in by mostly female visitors, many in dresses of the type often worn by Islamic women. The drugs were supplied by an undercover officer posing as a drug seller outside the complex.

Because all of the cocaine ultimately was routed to the cooperating inmate, none actually reached the general inmate population, prosecutors said.

On Jan. 23, Bell and Cook allegedly brought in three women to a schedule religious service in a conference room that was being used as a makeshift chapel. Prison officials earlier had intercepted a phone call between Bell and an inmate making plans to bring in the women, authorities said.

For about 10 minutes, an inmate using a smuggled video camera recorded sex acts between the women and the inmates, according to Timothy J. Shea, an assistant U.S. attorney who helped supervise the investigations. The informant later was able to obtain a copy of the video inside Lorton.

Moore said the prison temporarily will issue no new passes to visitors who say they represent religious groups and will subject all current volunteers to criminal, background checks. In addition, she said, guards will be ordered to constantly monitor services through observation windows and periodically walk through rooms where services are taking place.

Moore said prisons nationally are experiencing problems with the 1993 Religious Freedom and Restoration Act, saying it limits the ability of prison officials to restrict religious activities among inmates.

Todd Craig, a U.S. Bureau of Prisons spokesman, said representatives of religious who visit federal prisons already go through criminal background checks and receive extensive training on rules.

Jonathan Smith, executive director of the D.C. Prisoners Legal Services Project, said that he would closely review any restrictions on religious worship but that he probably would not oppose reasonable security measures.

"Religious activities in prisons are one of the most valuable tools available for an inmate's rehabilitation," Smith said. "If they want to search visitors, I probably would not have a problem. If they say there will be no more religious visitors, we would very likely challenge that in court."

Staff writer Leef Smith contributed to this report.

GRAPHIC: Photo, larry morris, U.S. Attorney Helen P. Fahey announces the indictments at a news conference in Alexandria. Behind her is D.C. Corrections Director Margaret A. Moore.

LANGUAGE: ENGLISH

LOAD-DATE: September 27, 1996

EXHIBIT J

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. JOHN WILLIAM GERHARDT III, EDWARD PAUL GERHARDT, Defendants-Appellants.
No. 80-5066, No. 80-5069
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT
627 F.2d 1093; 1980 U.S. App. LEXIS 15399

July 25, 1980

NOTICE:

UNPUBLISHED OPINION. Under Rule 11, unpublished opinions cannot be cited to the Sixth Circuit Court of Appeals.

Sixth Circuit Rule 24 Supersedes Rule 11.

COUNSEL: Victor Merullo, 722 South Front Street, Columbus, Ohio 43206 (Ct. appt. – CJA)

Harold Wonnell, 140 E. Town Street, Suite 1260, Columbus, Ohio 43215 (Ct. appt. – CJA) For Appellant

James C. Cissell, United States Attorney, 302 Federal Building, 85 Marconi Boulevard Columbus, Ohio 43215 For Appellee

OPINION:

ORDER

Before: MERRITT, KENNEDY, and MARTIN, Circuit Judges.

This is an appeal from a jury finding that John William Gerhardt III and Edward Paul Gerhardt were guilty of conspiring to violate the civil rights of school children, attempting to place a bomb in an institution receiving federal assistance, and attempting to obstruct justice. The primary proof adduced by the government consisted of tape recorded conversations between appellants and undercover agents which showed that appellants plotted to bomb a school attended by the daughter of U.S. District Judge Robert M. Duncan in order to protest his school desegregation orders.

Appellants argue here, as at trial, that they were members of peaceable white racist organizations the aims of which were "to involve themselves in political elections and to attempt to educate the public on their viewpoints." They allege that their nonviolent strategies were subverted at the insistence of George Giammarino, who they

had hired for "security" and who was a member of the Columbus Police Department.

While the Gerhardts insist that they were without predisposition to commit violent acts, see Hampton v. United States, 425 U.S. 484, 490 (1976); United States v. Jones, 575 F.2d 81 (6th Cir. 1978), there is a great deal of evidence in the record to suggest otherwise. It is therefore without the province of this Court of disturb the jury verdicts, and we decline to do so. See Jackson v. Virginia, 433 U.S. 307 (1979).

Appellants also contend that they were not afforded full discovery as to (a) their recorded conversations and (b) the names of certain government witnesses. However, the record shows that the United States Attorney afforded full access to the recorded materials. Finally, this Court and many others have held the government need not generally provide the identity of its witnesses prior to trial, see United States v. Carter, No. 79-5354 (6th cir., filed May 9, 1980), and the cases cited therein. The facts of this case provide no basis upon which to ignore this rule. See United States v. Trejo-Zambrano, 582 F.2d 460 (9th Cir. 1978).

The judgment of the District Court is affirmed.

EXHIBIT K

AFFIDAVIT OF HORST GIENAPP

County of Franklin :
: ss
State of Ohio :

Now comes Horst E. Gienapp, having been first duly sworn, and states and affirms as follows:

1. I am the Grants Chief of the Ohio Department of Rehabilitation and Correction ("ODRC) and have held that position since April 2, 1995. Among my duties is overseeing ODRC's efforts to obtain federal funding, including the process of applying for such funds and reviewing grant conditions so that ODRC may knowingly accept all conditions that accompany federal funds. As a result of my duties in that position I have personal knowledge of the matters set forth herein.

2. As of September 22, 2000 ODRC had accepted of 27 separate types of federal funds. ODRC received no other federal funds. The amounts and purposes of those funds are described in the document attached as exhibit I hereto.

3. None of the federal funds received by ODRC were specifically related to the religious practices of prisoners in its custody. None of the federal funds received by ODRC were in any way conditioned upon ODRC or its staff taking or refraining from actions that burden prisoners' religious exercise.

4. The total amount of federal funds received by ODRC is $25,545,892. Those funds will be disbursed over several years, which will span several of ODRC's fiscal years. ODRC's budget for the current fiscal year is $1,587,724,137.00.

Further affiant sayeth naught.

/s/ Horst E. Gienapp
Horst E. Gienapp

Sworn to before me and subscribed in my presence this 23rd day of October, 2000.

/s/ [Illegible]
Notary Public

[SEAL]
ROGER WICKS, JR.
Notary Public, State of Ohio
Expires 8/15/02

EXHIBIT L

OHIO DEPARTMENT OF REHABILITATION & CORRECTION DIVISION OF BUSINESS ADMINISTRATION GRANTS SECTION

Federal Grant Descriptions

DEPARTMENT OF JUSTICE:

Intensive Confinement Construction – CFDA # 16.586:

The Ohio Department of Rehabilitation and Correction (ODRC) received a federal grant in 1995 to construct a 125 bed Intensive Confinement Institution in Glouster, Ohio. This program will have a substance abuse treatment component, as well as an emphasis on transition back into the community for treatment continuity. The award is $1,736,164 (Correctional Boot Camp). Construction is underway.

Federal INS Video Teleconferencing Hearing Program CFDA # 16.710

ODRC was awarded this Technology Grant from the Office of Justice Programs (OJP)/ Community Oriented Policing Services (COPS). The videoconferencing system will be used to conduct hearing to confirm the identification and other dispositional matter for illegal and criminal aliens incarcerated at the Correctional Reception Center. Award amount: $62,500.

Reducing Correctional Officer and Family Stress in Ohio through Organizational Interventions – CFDA # 16.560:

ODRC received a grant to implement a comprehensive stress reduction program for correction officers in five Ohio corrections facilities and their families. Program components are: Mentoring for new probationary officers, an alternative dispute resolution program, a family orientation program, an employee family informational services hot line and website and a post-investigation debriefing policy. Current award: $100,000.

Research Reform CFDA # 16.560

The ODRC received funding to provide services of its Bureau of Research to assist in the completion of examining the effects of Ohio's "Truth-in-Sentencing" reforms on inmate institutional behavior. Current award: $117,570.

State Criminal Alien Assistance Program (SCAAP) – CFDA # 16.572:

ODRC receives funds for the costs incurred for the imprisonment of foreign nationals convicted of felonies in of Ohio. These funds in conjunction with prior fiscal year funds, are granted in-house to cover the development of innovative pilot projects, as well as,

conferences and staff training. An example is ODRC's annual gang training. The current award is $1,358,185.

Violent Offender Incarceration/Truth in Sentencing (VOI/TIS) - CFDA # 16.586:

This program is funded through a formula grant based upon violent offenders incarcerated in Ohio and the enactment of Senate Bill 2. The funds are used for construction and renovations at ODRC, DYS and County Jails. Current award: $12,143,169.

OHIO DEPARTMENT OF EDUCATION:

Adult Basic Education - CFDA # 84.002:

The Ohio Department of Education (ODE) program, Adult Basic Education, provides funding for classroom instruction to inmates for adult education classes within institutions and Community Based Correctional Facilities (CBCF). Current award: $829,977.

Title 1- CFDA # 84.013:

These funds support ODRC's school system, (Ohio Central School Systems, OCSS), with supplemental instruction in reading, mathematics and language arts for low functioning adult inmates under the age of 21, and offenders in Community Based Correctional Facilities (CBCF's). The current award: $1,515,357.

Title VI (Formerly Chapter II) - CFDA # 84.298:

The OCSS staff development grant complements the Title I program and supplements education programs in the institutions by providing funding for the cost of workshops and staff development meetings. Current award: $18,858.

Special Education - Unit Allocation (Reimbursement) - 99.999 (No CFDA #):

The ODE program, Special Education, provides reimbursement to ODRC for developmentally handicapped inmates under the age of 21. Utilizing Special Education certified teachers, instructional classes include living skills, reading, and math. The ODE provides reimbursement based on a funding formula for each program year. DRC currently receives $863,672 in reimbursements.

Special Education Supplemental Program - CFDA # 84.027:

The ODE implemented this pass through grant to supplement the Special Education Unit Allocation program which is used to purchase supplies and materials for the special education curriculum. The OCSS currently receives $145,126.

Vocational Education - CFDA # 84.048:

For vocational education ODRC receives pass through federal funds from ODE as well as a specific federal grant (Carl D. Perkins) for the purchase of materials, supplies and equipment. The Carl D. Perkins grant is $224,000 and the pass through unit funds allocation is $1,300,000.

Library Services and Construction Act - CFDA # 84.034 Closed:

Grant funds pass through the (ODE) to the State Library. The program supports libraries within 12 institutions. Funds are used to improve library services to inmates by purchasing library supplies, books and other equipment. FY 1998 was the last year of funding. The FY 1998 grant award totaled $87,930. **This program is closed.**

Adult High School – 99.999 (No CFDA # – Rotary Funds):

The ODE provides reimbursement to ODRC for expenses incurred in the administration of the Adult High School program. Current reimbursement: $93,913.

GED Testing – CFDA # 84.002:

The ODE provides reimbursement to the ODRC for expenses incurred in the administration of a General Development Diploma program. Current reimbursement is $78,176.

Federal School Breakfast – CFDA # 10.553:

The ODE provides reimbursement to the ODRC for meals and/or milk served to incarcerated inmates under 21 years of age. Current reimbursement for this program: $437,131.

Federal School Lunch – CFDA # 10.555:

The ODE provides reimbursement to the ODRC for meals and/or milk served to incarcerated inmates under 21 years of age. Current reimbursement for this program is $777,983.

Incarcerated Youth Offender Program (IYO) – CDFA # 84.331:

This US Department of Education Grant enables the Department to provide sub-grants to colleges and universities for the purpose of providing post secondary employment education skills to eligible ODRC inmates. The current award is $681,294.

Entry Year Program CFDA # 84.084:

The ORDC's school system, OCSS, will use these federal funds to implement a pilot training program to

serve a number of beginning teachers, mentors and "Praxis III" assessors to help-them in their first year as new vocational teachers. The program will be funded for one year at $100,000

OFFICE OF CRIMINAL JUSTICE SERVICES: (pass through federal funds from BYRNE Memorial Program and others from the US Justice Department.)

Offender Job Linkages – CFDA # 16.579:

This program is funded through the Office of Criminal Justice Services and assists the offender in preparing for employment upon release from institutions by assessing employer needs and offender training and preparation. This program is funded on a calendar year basis. Final award is $272,600.

Residential Treatment Programs – CFDA #16-593:

ODRC received four competitive grants from the Office of Criminal Justice Services to provide substance abuse treatment services for the inmates:

1. The Noble Correctional (institution based) program is funded from a the Residential Substance Abuse Treatment Program (RSTAT) for $280,930.

2. Nova House (community based half-way house component in Dayton, Ohio) (RSTAT) for $337,324.

CFDA # 16.579:

3. ODRC received two grants and is sub-granting two projects to Wright State University. The prison project is called "Institution Alcohol and other Drugs (AOD) Case Management" and the current sub-grant is for $480,093.

4. The community based program is called "Community AOD Case Management for $415,970.

OHIO ATTORNEY GENERAL:

Victim Information and Notification Everyday (VINE) – CFDA # 16.575:

Vine is a service that provides incoming call services for crime victims within a specific county. Victims of crime are able to contact this service to receive basic information about a defendant held in custody. Funding for this program is provided through the Ohio Attorney General's Office in the amount of $134,700.

U.S. SOCIAL SECURITY ADMINISTRATION (SSA) – 99.999 (No CFDA#:

Incentive Payment Memorandum of Understanding (IPMOU)

This is an agreement between ODRC and the Social Security Administration. The purpose of the agreement is that the Department provides SSA with information on inmates when they enter our system so the SSA can make determinations regarding SSE or RSDI benefits. SSA reimburses ODRC for our staff time in providing this information. To date we have received $41,200 in our Federal Fund account (323). The Department does not intend to spend these funds and in the near future move them to a, General Revenue Account and reimburse the general fund.

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

John Miller, et al., Plaintiffs,	:	Case No.: C2-98-275
v.	:	JUDGE SARGUS
Reginald Wilkinson, et al., Defendants,	:	MAGISTRATE JUDGE KEMP
John Gerhardt, Plaintiff,	:	CLASS ACTION
v.	:	Case No.: C2-95-517
Alan Lazaroff, Warden, et al., Defendants.	:	MAGISTRATE JUDGE KEMP

PLAINTIFF'S JOINT REPLY TO DEFENDANTS' CONSOLIDATED PARTIAL MOTIONS TO DISMISS

[Exhibits]

* * *

PLAINTIFFS' APPENDIX A

AFFIDAVIT OF CHARLES MONTGOMERY

STATE OF ARIZONA	:	
	:	SS
COUNTY OF MARICOPA	:	

I, Charles M. Montgomery, after being sworn, give the following affidavit under oath:

1. I have been employed in the field of corrections for more than 37 years. During that time I have worked

at a number of Federal, State, and Commonwealth prison/jail facilities. My work resume is attached to this affidavit.

2. My duties have included the direction and oversight of institution operations and procedures which are related to custody, security and control as well as a number of programs and services including religious services.

3. My job assignments have included a number of progressively responsible positions from line staff Correctional Officer to Warden at the institutional level, to Branch Chief, Division Manager and Director of Institution Operations at the Central Office level.

4. I retired from the Federal Prison System on August 1, 1987 and since that time I have worked as an independent consultant in a number of city, county, and state jurisdictions including the Commonwealth of Puerto Rico.

5. During my 37 years as a correctional/penal practitioner it has been my experience that security issues are seldom raised by inmate participation and/or the accommodation of religious practices and services, per se, and when they are they can and should be handled on a case by case basis.

6. It has also been my experience that prison officials may be inclined to attempt to limit the number of inmate programs and services, including religious activities, as a matter of administrative convenience as the result of the availability/existing resources. Thus, they can be inclined to limit and/or combine a number of religious and/or program activities for no more reason than they would consider double bunking cells even when said practice flies in the face of institution security and objective inmate classification.

7. It is my professional opinion that inmates who are legitimately engaged in religious activities they sincerely hold to be true are less likely to commit serious disciplinary infractions than those who are less involved in their own religious activities.

8. Religious exercise gives inmates the opportunity to maintain their feelings of self worth and self identity and it can provide individuals with the opportunity to bond with others who share the same belief. It can also provide them with the opportunity to measure their beliefs and conduct to universal standards of good behavior.

9. I believe that inmates who express sincere religious convictions and are able to practice said beliefs have a greater likelihood of rehabilitation and reform as well as a diminished likelihood of recidivism. I believe this is true of all religions, not just contemporary or mainstream religions.

10. Finally, it is my professional opinion that inmates who feel they have not been provided with reasonable opportunities to practice their sincerely held religious beliefs will result in a much higher rate of incident reports than those who have not been subjected to said disparate treatment.

Further, the Affiant, sayeth naught.

/s/ Charles M. Montgomery
Charles M. Montgomery

Sworn to before me and subscribed in my presence this 21st day of February 2001,

/s/ JM Hannah
Notary Public

OFFICIAL SEAL
J.M. HANNAH
[SEAL] Notary Public – State of Arizona
MARICOPA COUNTY
My Comm. Expires May 10, 2003

Charles M. Montgomery, Jr.

D.O.B. 7/5/37 12/19/98

Overview: Beginning with post retirement from Federal BOP

Dates: August 1, 1987 through present (Inverse Order)

Duties Capacity: Case: Location: Subject/Yr.:

21. Consultant, Daughtry v. New York City, Inmate Assault, 98
20. Consultant, Weeks v. Montana – Staff Assault by Inmate, 98
19. Consultant, Eakins v. Chaffee (Calif.) – Use of Force, 98
18. Consultant, Krausch M. v. Arizona –Improper Strip Search, 98
17. Expert Assistance, Coiner v. U.S. – Witness Protection, 97
16. Consultant, Krausch P. v. Arizona – Protective Custody, 97
15. Consultant, Sheppard v. Phoenix (II), NYC – Excessive Force, 97
14. Consultant, Davis v. City of Greenville, MS. – Malfeasance, 96
13. Consultant, Illick v. Miller, Ely, Nevada – Use of Force, 96
12. Consultant, Maine v. Oklahoma, Employee – Rape/Civil Rights, 96
11. Court Expert, Settle v. Savage, AZ – Protective Custody, 96
10. Consultant, Sheppard v. Phoenix, NYC – Execssive Force, 95
9. Consultant, McMullen v. Harris County, TX – Jail Assault, 95
8. Consultant, Rosa Myhre v. Montana – Wrongful Death, 94
7. Consult. Morales-Feleciano v. Colon, PR – Total Conditions, 6 yrs
6. Consult. for the National Institute of Corrections – Umgt., 87

5. Consult. for the State of South Dakota – Unit Management, 87
4. Expert Witness, Small v. Martin, NC – Overcrowding, 87
3. Consultant for the State of MS – Classification/Umgt., 87
2. Contract Instructor, NAC, Boulder, CO – Inmate Classification, 87
1. Interagency Loan (Warden) Guthrie v. Evans, GA – Total Cond., 2 yrs

Court Testimony: 4, 7, & 10. Depositions: 10, 11, 12, 13, 15, 19 Case Settled: 8, 9, 11, 12, 13, 14
Grand Jury: 1

Position: Lead Consultant and Member of the Commonwealth's Special Management Team for the Rio Piedras Prison Complex, San Juan, Puerto Rico.

Dates: August 1, 1992 to July 16, 1993

Duties: As per government stipulation, in the Morales-Feleciano Case, operational authority at the State Penitentiary/Jail; i.e., the "Rio Piedras Prison Project" was vested in a special management team to serve as "advisors". Said special management team was supervised by the Honorable Ramon Garcia Santiago first, while he was serving as the Governor's personal representative and finally, while he was under a personal services contract (following his retirement as Secretary of State).

Position: Interim Director, Institution Operations (New Division)

Dates: October 15, 1989 to August 1, 1992

Duties: Served as the first director for one of five primary divisions within the Administration of Corrections (AOC) for the Commonwealth of Puerto Rico, on an interim basis. The

operations division consisted of (7) major components within the agency and was responsible for providing technical advice and oversight responsibility for thirty or more facilities in the areas of Security, Social Work, Inmate Grievances, Food Service, Education, Religion, and Compliance efforts in the Morales-Feliciano Case.

Position: Division Manager
Federal Prison Industries
320 First St. N.W.
Washington, D.C. 20534

Dates: November 1985 – July 1987

Duties: As the "first" Division Manager for UNICOR Distribution Centers, I was responsible for everything from teasing out the idea of establishing Distribution Centers (across the country) to the development of day to day procedures by which the concept was initiated (including staff analyses). Distribution Centers were established for the purpose of increasing sales and customer satisfaction by providing quick delivery (14 days or less) on select quantities of UNICOR's most popular products. UNICOR sold more than $250 million worth of products to other government agencies during FY-87.

Position: Chief of Unit Management
Federal Bureau of Prisons
320 First Street N.W.
Washington, D.C. 20534

Dates: September 1983 – November 1985

Duties: (Position reactivated following GAO Audit). As the first Chief of Unit Management in a number of years, I was given functional

responsibility for revitalizing Unit Management in the Federal Prison System. I clarified agency standards and rewrote policy and procedures which included staffing guidelines. I participated in numerous audits and training seminars and had a direct influence on more than 200 Unit Managers, 300 Case Managers and 400 Counselors throughout the Federal Prison System.

Position: Associate Warden – Security/Programs
Federal Correctional Institution
Petersburg, VA. 23804-1000

Dates: July 1982 – September 1983

After completing a two year interagency loan as Warden at Georgia State Prison, I was transferred to Petersburg, Virginia which had been designated to handle the more difficult Youth Corrections Act (YCA) offenders in the Federal Prison System. I conducted a comprehensive security post analysis and oversaw the development and implementation of a Special Management Unit (SMU) for those inmates who had demonstrated they could not live in the general population. I also developed a comprehensive tracking system by which the need for programs and services were taken into consideration and monitored.

Position: Warden
Georgia State Prison
Reidsville, GA. 30399

Dates: July 1980 – July 1982

Duties: In addition to carrying out the traditional duties as Chief Executive Officer for the state's largest maximum security prison; i.e., overseeing the orderly running of an 8,000

acre farm operation, beef herd, swine herd, dairy herd, cannery, sawmill and providing inmates for a number of work details (across the state); I was responsible for for bringing the facility into the 1980's insofar as professional custody, security and control practices and procedures were concerned. Major emphasis was placed on achieving compliance with numerous federal court orders that were the result of years of litigation (Guthrie vs Evans). Initially intended to be a one year assignment, it was subsequently extended a second year because the problems were so varied and complex. In my final report to Governor George Busbee, Chief Judge Anthony Alaimo and Commissioner David Evans, I made more than two dozen recommendations that were adopted including procedures whereby the State would assume full control and responsibility over Georgia State Prison. In hindsight, this was the most challenging and rewarding assignment of my first 25 years in corrections. During my tenure I personally conducted and oversaw the completion of a comprehensive security staff analysis for this facility. Reidsville was the first and only penitentiary that I am aware of which utilized a complete (unadulterated) version of functional unit management!

Position: Superintendent
Federal Prison Camp
Safford, AZ. 85546

Dates: January 1978 – June 1980

Duties: As the Chief Executive Officer for FPC Safford, I was responsible for seeing that all

policies and procedures were carried out in accordance with agency standards. Prior to my departure I made numerous recommendations which resulted in significant changes at FPC Safford (Structural and Staffing). Safford was the first Federal Prison Camp to adopt Unit Management and it was the only prison *camp* to implement a full-fledged Industrial Unit.

Position: Director, Community Treatment Complex
1950 Trumbull Avenue
Detroit, MI. 48216

Dates: January 1976 – January 1978

Duties: Chief Executive Officer for two federal halfway houses in the downtown Detroit area. Major emphasis was placed on inmates obtaining gainful employment, establishing a firm release address/plans, accumulation of release monies (savings) and participation in a variety of individual and/or group interactions with staff including resume writing, management of money, problem solving techniques, interpersonal communications, AA, and drug aftercare programs. Utilized a very structured "leveling program". Average length of stay was ninety days. This program, in conjunction with the proper utilization of existing staff resources, resulted in the highest "success rate" of any federal halfway house in the country (93.7%) as determined by independent research.

Position: Executive Assistant (to the Warden)
Federal Correctional Institution
Lompoc, CA. 93436

Dates: October 1974 – January 1976

Duties: Worked directly for the Warden & performed those duties he deemed appropriate. Had functional responsibility for establishing Unit Management at one of the largest facilities in the Federal Prison System (Eight units inside the institution and two units at the adjacent camp). I was nominated to receive the agency's *Alexander Award* in 1995. This award is presented to the outstanding supervisory employee of the year throughout the FPS.

Position: Unit Manager
Federal Correctional Institution
Seagoville, TX. 75159

Dates: April 1973 – October 1974

Duties: As the Administrative Head for one of five functional units, I was responsible for a caseload of approximately 125 inmates and a unit staff of one case management specialist, three correctional counselors, one unit secretary and three correctional officers. Utilizing a "progressive privilege" unit modality "Unit Six" was subsequently designated as one of several *exemplary units* which were utilized to train unit managers throughout the Federal Prison System.

Position: Senior Instructor
Staff Training Center
523 McDonough Blvd.
Atlanta, GA. 30315

Dates: February 1972 – April 1973

Duties: One of 5 instructors who were responsible for developing and presenting course materials at one of two national training centers for the Federal Bureau of Prisons. I was personally

responsible for the development of a training manual and program for the Bureau's first Correctional Counseling Program. This program was subsequently retitled "Basic Interpersonal Communication" and became a model IPC training program across the country. I also provided technical staff assistance to a number of States during my tenure at the Staff Training Center.

Position: Training Officer
Federal Correctional Institution
Lompoc, CA. 93436

Dates: June 1971 – February 1972

Duties: I had responsibility for the development & implementation of a comprehensive employee development/training program at FCI Lompoc. Essentially, I was the agency's first formal Institution Training Coordinator. Primary emphasis was placed on training received by line staff correctional officers. I also coordinated the effort to identify, schedule and provide speciality training for other disciplines. I was the first BOP employee to be certified as a Master Trainer in Human Resource Development and Life Skills Acquisition by Dr. Robert R. Carkhuff at AIC in Springfield, Massachusetts.

Position: Assistant Personnel Officer
Federal Correctional Institution
Lompoc, CA. 93436

Dates: October 1969 – June 1971

Duties: Performed myriad of duties which are associated with personnel actions; e.g., staff recruitment and paperwork. Coordinated facility's performance appraisal and incentive awards

programs. Began the development of a comprehensive inservice training program for all new hires at FCI Lompoc with special emphasis on probationary C.O.'s

Position(s): (1) Correctional Officer
(2) Senior Officer
(3) Liaison Officer (Counselor)

FCI Lompoc, CA. 93436

Dates: August 1964 – October 1969

Duties: Performed a variety of duties on dozens of progressively responsible security posts on a rotating basis. Primary focus was placed on custody, security, control and the supervision & counseling of inmates on an as needed basis.

As a Correctional Counselor I had an assigned caseload for which I kept track of work and quarters reports, and the maintenance of visiting and correspondence lists, preparation of reclassification materials and provided recommendations in regard to release, work, custody and housing assignments.

PLAINTIFF'S APPENDIX B

OH ST S 5120.132
R.C. § 5120.132

BALDWIN'S OHIO REVISED CODE ANNOTATED TITLE LI. PUBLIC WELFARE CHAPTER 5120. DEPARTMENT OF REHABILITATION AND CORRECTION

GENERAL PROVISIONS

5120.132 PRISONER PROGRAMS FUND

(A) There is hereby created in the state treasury the prisoner programs fund. The director of rehabilitation and correction shall deposit in the fund all moneys received by the department from commissions on telephone systems established for the use of prisoners. The money in the fund shall be used only to pay for the costs of the following:

(1) The purchase of material, supplies, and equipment used in any library program, educational program, religious program, recreational program, or pre-release program operated by the department for the benefit of prisoners;

(2) The construction, alteration, repair, or reconstruction of buildings and structures owned by the department for use in any library program, educational program, religious program, recreational program, or pre-release program operated by the department for the benefit of prisoners;

(3) The payment of salary, wages, and other compensation to employees of the department who are employed in any library program, educational program, religious program, recreational program, or pre-release program operated by the department for the benefit of prisoners;

(4) The compensation to vendors that contract with the department for the provision of services for the benefit of prisoners in any library program, educational program, religious program, recreational program, or pre-release program operated by the department;

(5) The payment of prisoner release payments in an appropriate amount as determined pursuant to rule;

(6) The purchase of other goods and the payment of other services that are determined, in the discretion of the director, to be goods and services that may provide additional benefit to prisoners.

(B) The director shall establish rules for the operation of the prisoner programs fund.

PLAINTIFF'S APPENDIX C

State of Ohio

: ss

County of Warren

Now comes affiant, Alfar Kynwulf (also known as Darryl Blankenship), and being duly cautioned as to the penalty of perjury does hereby depose and say:

1. That I have personal knowledge of the facts stated herein and I am competent to testify to same.

2. That I am a Plaintiff in the matter of *John Miller, et al, v. Reginald Wilkinson, et al.*, Case no. C2-98-275, United States District Court, Southern District of Ohio, Eastern Division.

3. That I am an adherent to the ancient Nordic/Teutonic religion of Asatru.

4. The Ohio Department of Rehabilitation and Corrections has banned from their state prisons various books pertaining to the Asatru religion. These banned books would include, but are not limited to, the following:

a. *The Well of Remembrance* by John Metzner. This book deals with the mythology and cultures of stone-age and bronze-age Europe and Asia. While this book espouses no racist nor political views, it has been banned from Ohio prisons by the Publication Screening Committee as being "racist" and "white supremacist".

b. *Runelore* by Edred Thorsson. This book deals with the history and mythology of the ancient Germanic alphabet known as runes which are considered to be mystical and magical aides within the Asatru religion. While this book espouses no racist nor political views, it has been banned from Ohio prisons by the Publication Screening Committee as being "racist" and "white supremacist".

5. Both books referred to above in paragraph number 4 are religious in nature, and are published outside the state of Ohio and can be obtained only through interstate commerce.

6. I have requested to purchase and possess the following religious items in connection with the practice of the Asatru religion. These religious items are produced and distributed from outside the state of Ohio and can be obtained only through interstate commerce:

a.) *Wooden ritual bowls* (known as Blotbolli). While I am not permitted to purchase or possess a wooden ritual bowl, this prohibition does not apply to adherents of the Wicca religion.

b.) A *sacrificial evergreen twig* or representation thereof (known as Hlauttein).

c.) An *altar or oath ring* (known as stallahringr).

d.) *Statuettes of gods or goddesses.*

e.) A *ritual drinking horn* (known as drekkjarhorn).

f.) A *ritual runic wand* (known as Gandr). While I am not permitted to purchase or possess a runic wand, this prohibition does not apply to adherents of the Wicca religion. In addition, inmates associated with the Music association are permitted to possess drum sticks, which are the equivalent of larger and heavier runic wands, twice the size and weight of the wand I request to possess.

g.) *Wooden runes*. While I am not permitted to purchase or possess wooden runes, inmates are permitted to purchase and possess Domino game pieces. Domino game pieces are nearly identical to runes, with the exception being that Domino's are inscribed with (dots, while runes are inscribed with lines (said lines making up the ancient Germanic runic alphabet).

h.) An *Alter cloth*. While I am not permitted to purchase or possess an altar cloth, this prohibition does not apply to adherents of the Wicca religion.

i.) A *Valknot medallion*.

7. The Defendants in the matter of *Miller, et al., v. Wilkinson, et al,* have refused to allow me to purchase or possess all the religious items referred to in paragraph 6 above. In fact, the defendants have banned all Asatru religious items from Ohio prisons, and will not allow same to be purchased or possessed with the exception of a *Thor's Hammer medallion* and *paper rune cards.*

8. Under the penalty of perjury and pursuant to 28 U.S.C. section 1746, I hereby certify the foregoing to be true and correct. Executed on this 13th day of February, 2001.

Respectfully submitted,

/s/ Alfar Kynwulf/Darryl Blankenship
Alfar Kynwulf, a.k.a.
Darryl Blankenship #295-771
Warren Corr. Inst. – 2C 137
P.O. Box 120
Lebanon, Ohio 45036

PLAINTIFF'S APPENDIX D

Notice of Withholding Printed Material Pursuant to AR 5120-9-19

Institution: Warren Correctional	Date: 10-17-00
Inmate Name: Miller	Inmate Number: 199-891

The printed material being excluded is the following:
Runelore

Pursuant to Administrative Regulation 5120-9-19, the printed material listed above and addressed to you is

being excluded from the institution because it has been deemed to be detrimental to, or to pose a threat to: the rehabilitation of inmates; the security of the institution; or, the good order or discipline of the institution. Specifically, it was determined that this material:

☐ C1 Facilitates, encourages, incites, promotes, or instructs in, criminal activity such as rioting or illegal drug use.

☐ C2 Depicts, encourages, incites, or describes activities which may lead to, the use of physical violence against others.

☐ C3 Depicts, describes the procedures for, or instructs in the making, using or concealing of weapons.

☐ C4 Depicts, encourages, or describes methods of escape, such as instruction in picking locks or digging tunnels.

☐ C5 Appears to be written in cipher or code, or that instructs in the use of cipher or code.

☐ C6a Is sexually explicit in that it depicts or graphically describes genitalia in a state of arousal, such as a male erection, or exposure of the clitoris.

☐ C6b Is sexually explicit in that it depicts or graphically describes homosexual, heterosexual, or auto erotic sex acts including, but not to be limited to: fellatio, cunnilingus, masturbation, ejaculation, anal or vaginal sexual intercourse of penetration, or manual stimulation of genitalia.

☐ C6c Is sexually explicit in that it depicts or graphically describes sexual activity involving children.

☐ C6d I sexually explicit in that it depicts or graphically describes sexual activity involving sadism, sadomasochism, bondage, or bestiality, or excretory functions.

☐ C6e Is sexually explicit in that it depicts or graphically describes sexual activity which involves and unwilling participant or in which a participant is the subject of coercion.

☐ C6f Is sexually explicit in that it depicts or graphically describes encourages, promotes, or incites homosexual activity in the institution.

☒ **Other** (state concisely): White Supermist[sic]/Racial

Specific example, or citation from the printed material:

Song or Page #	Example or citation (quote or described the depiction)
_____	White Supermist/pose a threat to the rehabilitation
_____	of inmate: the security of the institute

Warden or Designee:	Date:
Quincy Daniels/Mail Room Supervisor	10-17-00

To request review of this decision by central office publication screening committee, you must return this form to the warden or designee within 15 days of the date of this notice. Failure to exercise one of the options below will be construed as acceptance of this decision and forfeiture of the printed material. In such a case material will be destroyed 15 days after the date of this notice.

Please select one of the following options:

☒ I request review by the central office publication screening committee

☐ I would like to mail the material to _____ at my expense.

☐ Please destroy this material

Inmate Signature:	Inmate Number:	Date:
/s/ [Illegible] Miller	199-891	10-17-00

[LOGO] **Ohio Department of Rehabilitation and Correction**

[Names and Addresses Omitted In Printing]

To: Warden, WCI

From: Publication Screening Committee

Subject: *Publication:* RUNELORE
Publication Date: 1987
Inmate: MILLER
Inmate Number: A199-891
Type of Item: Printed Material

Date: Dec 28, 2000

PSC Reference Number: 3805

Pursuant to Administrative Regulation 5120-9-19, the Central Office Publication Screening Committee has reviewed the decision to withhold the above referenced material. Upon review, the Committee found the material to be detrimental to the rehabilitation of inmates, the security, good order, or discipline of the institution as defined by Administrative Regulation 5120-9-19(C)(6). The decision to Withhold the material was properly issued and the material shall therefore be EXCLUDED from the institution.

The printed material shall be returned to the institution for disposition pursuant to Administrative Rule 5120-9-19(M).

Notice of Withholding Printed Material Pursuant to AR 5120-9-19

Institution:	Date:
Warren Correction	1-19-01
Inmate Name:	**Inmate Number:**
Miller	199-891

The printed material being excluded is the following:
Runelore The Well of Remembrance

Pursuant to Administrative Regulation 5120-9-19, the printed material listed above and addressed to you is being excluded from the institution because it has been deemed to be detrimental to, or to pose a threat to: the rehabilitation of inmates; the security of the institution; or, the good order or discipline of the institution. Specifically, it was determined that this material:

☐ C1 Facilitates, encourages, incites, promotes, or instructs in, criminal activity such as rioting or illegal drug use.

☐ C2 Depicts, encourages, incites, or describes activities which may lead to, the use of physical violence against others.

☐ C3 Depicts, describes the procedures for, or instructs in the making, using or concealing of weapons.

☐ C4 Depicts, encourages, or describes methods of escape, such as instruction in picking locks or digging tunnels.

☐ C5 Appears to be written in cipher or code, or that instructs in the use of cipher or code.

☐ C6a Is sexually explicit in that it depicts or graphically describes genitalia in a state of arousal, such as a male erection, or exposure of the clitoris.

☐ C6b Is sexually explicit in that it depicts or graphically describes homosexual, heterosexual, or auto erotic sex acts including, but not to be limited to: fellatio, cunnilingus, masturbation, ejaculation, anal or vaginal sexual intercourse of penetration, or manual stimulation of genitalia.

☐ C6c Is sexually explicit in that it depicts or graphically describes sexual activity involving children.

☐ C6d Is sexually explicit in that it depicts or graphically describes sexual activity involving sadism, sadomasochism, bondage, or bestiality, or excretory functions.

☐ C6e Is sexually explicit in that it depicts or graphically describes sexual activity which involves and unwilling participant or in which a participant is the subject of coercion.

☐ C6f Is sexually explicit in that it depicts or graphically describes encourages, promotes, or incites homosexual activity in the institution.

☐ **Other** (state concisely): _____

Specific example, or citation from the printed material:

Song or Page #	Example or citation (quote or described the depiction)
_____	Racist
_____	Pose a threat to the rehabilitation of inmate

Warden or Designee:	Date:
Sgt. Quincy Daniels/Mailroom Supervisor	1-19-01

To request review of this decision by central office publication screening committee, you must return this form to the warden or designee within 15 days of the date of this notice. Failure to exercise one of the options below will be construed as acceptance of this decision and forfeiture of the printed material. In such a case material will be destroyed 15 days after the date of this notice.

Please select one of the following options:

☐ I request review by the central office publication screening committee

☒ I would like to mail the material to David Goldburger Lawyer at my expense.

☐ Please destroy this material

Inmate Signature:	Inmate Number:	Date:
/s/ [Illegible] Miller	199-891	1-19-01

PLAINTIFFS' APPENDIX E

AFFIDAVIT OF SIMON SCHATZ

State of Ohio

:ss

County of Warren

Now comes affiant, Simon Schatz, who first being duly cautioned as to the penalty of perjury does hereby depose and state:

1. That I have personal knowledge of the facts stated herein and I am competent to testify to same.

2. That I am an Ohio inmate incarcerated within the Warren Correctional Institution at Lebanon, Ohio, under

the jurisdiction of the Ohio Department of Rehabilitation and Corrections.

3. That I am an adherent of the ancient Nordic/Teutonic religion known as Asatru, and that I am a class action Plaintiff in the matter of *John Miller, et al., v. Reginald Wilkinson, et al.,* Case no. 02-98-275, United States District Court, Southern District of Ohio, Eastern Division.

4. That it is traditional for adherents to the Asatru religion to wear a Thor's Hammer religious medallion as a sign of their faith.

5. Thor Hammer medallions are produced and sold by persons or companies outside of Ohio. The most popular being World Tree Publishing, P. O. Box 961, Payson, Arizona 85547, and Runa-Raven, P. O. Box 557, Smithville, Texas 78957. As such, Thor's Hammer religious medallions are purchased through interstate commerce.

6. That I have requested permission from the Ohio Department of Rehabilitation and Corrections to purchase a Thor's Hammer medallion. The Ohio Department of Rehabilitation and Corrections has refused to permit me to purchase a Thor's Hammer religious medallion.

7. That I have filed a grievance concerning the fact that I am denied the opportunity to purchase a Thor's Hammer medallion. My grievance was assigned reference number 11-00-12. The decision to deny me the opportunity to purchase a Thor's Hammer medallion was upheld and affirmed pursuant to the disposition of my grievance.

8. That pursuant to 28 U.S.C. section 1746, I hereby certify under the penalty of perjury that the foregoing is true and correct. Executed on this 16th day of February, 2001.

Respectfully,

/s/ Simon Schatz 267525
Simon Schatz 267-525
Warren Correctional
Institution
P. O. Box 120
Lebanon, Ohio 45036
Affiant

DISPOSITION OF GRIEVANCE

CODE:I-G-4
RESOLUTION:II-B-5
INSTITUTION:W.C.I.

INMATE: Schatz
NUMBER: A267-525

GRIEVANCE NUMBER:11-00-12

2D-153

DATE:11/27/00

Your grievance, filed on 11/14/00, has been reviewed and disposed of as follows:

___ 1. The grievance has been returned because you did not attempt to resolve your problem by contacting ___, who is able to discuss the problem with you. Once you comply with the procedure, you may file a new grievance if not satisfied with the result.

___ 2. The disposition of this grievance will be delayed longer than ten working days for the following reason(s):

___ 3. The disposition of this grievance will be delayed longer than 15 working days and you are requested to approve this extension. DO/DO NOT APPROVE

In your grievance you allege discrimination by Chaplain Van Scoter at WCI. You state the Chaplain has discriminated against you by refusing to allow you to purchase a religious medallion, i.e. "Thors Hammer", even though you adhere to the "Asatru" religion.

Remedy requested: Permit you to purchase the "Thors Hammer" religious medallion.

I have reviewed your file and ICR response from Chaplain Van Scoter. As stated by Chaplain Van Scoter, the "Asatru" lawsuit is still in, the courts. The only individuals permitted to possess the "Thors Hammer" medallion are listed in the lawsuit and you are not on that list. To my knowledge, two inmates at WCI have received permission, per Dr. Schwarz, to possess the "Thors Hammer" medallion, neither of which are you.

Based on the above, I believe your grievance and remedy requested are without merit. Until the lawsuit is settled, you may not purchase or possess the above-mentioned religious medallion. This office will take no further action concerning this matter.

If you wish, you may appeal this decision to the Chief Inspector within five working days from receipt of this disposition. Appeal forms are available in the office of the Inspector of Institutional Services.

Mr. J.C. DeHart /s/ JC DeHart
Inspector of Institutional Services

PLAINTIFFS' APPENDIX F

State of Ohio §
§ ss
County of Ross §

The undersigned, being first duly cautioned according to Law, does hereby state and depose as follows:

1). I have personal knowledge of and am competent to testify to all matters addressed herein, and:

2). I am one of two (2) Plaintiffs in the Case of LEE v. Wilkinson, Southern District of Ohio Eastern Division Case Number C2-97-382, and I am a member of the Wiccan Religion, and:

3). I had attempted to obtain, through purchase or other means, access to many different religious printed materials of, and relating to, Wicca, while incarcerated in the Pickaway Correctional Institution through the years of 1995 – 1998. Some of these titles are listed as follows:

Wicca – The Ancient Way
The Magician's Workbook Of Witches
The Ritual Book of Magic
Samuel Weiser catalog 1996
Serpent's Occult Bookstore catalog
The Magic of food: Legends, Lore and Spells
Earth Power – Techniques of Natural Magic
Buckland's Complete book of Witchcraft
Cunningham's Encyclopedia of Crystal, Gem and Metal Magic
Cunningham's Encyclopedia of Magical Herbs
Pragmatic Magic: Grimoire of Modern Society.
Basic Magic: A Practical Guide
Secrets of *Shamanism*
The Wicca Spellbook

Magical Rites from the Crystal well
Modern Witchcraft Spellbook

and:

4). Each of these publications is religious in nature, and:

5). To the best of my knowledge, each of these is published outside of the State of Ohio, and may only be obtained through interstate commerce, and:

6). Various and sundry Defendants in LEE, et al., v. Wilkinson, et al., Case Number C2-97-?82, have refused to allow me to personally purchase, or otherwise obtain access to, each of the publications listed above, and:

7). I have also attempted to obtain permission to purchase or otherwise obtain access to materials with which to practice Wicca, while incarcerated in the Pickaway Correctional Institution through the years of 1995 – 1998. Some of these items are listed as follow:

A Pentacle
Salt
Quartz Crystals
A Wooden Wand
Incense and/or scented oils
Herbal Teas
Rune Stones
Thread, string, cord or twine
Herbal "tobaccos"
A Pentacle Ring

and:

8). These items are produced and sold by persons outside the State of Ohio, and may only be obtained through use of interstate commerce, and:

9). Various and sundry Defendants in LEE, et al., v. Wilkinson, et al., Case Number C2-97-382, have refused to grant me permission to personally purchase, or otherwise obtain possession and or use of, each of the items listed in paragraph 7, above.

Further deponent saith naught.

Pursuant to 28 U.S.C.A. §1746, I declare and affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief, this 11th day of February, 2001.

[Illegible]
LEE – a.k.a. Inmate hampton

Plaintiffs' Appendix G

Inter-office Communication

Date: August 6, 1996

To:

From: Rev. Charles Griffin, Chaplain

Re: Sabbath Meals, and Candles

In a lengthy meeting with Dr. David Schwarz, Administrator of Religious Services, on August 5, 1998, all your requests were discussed. We were reminded that the Ohio Department of Rehabilitation and Correction made an exception in your situation in allowing the Kosher meals even though the House of Yahweh is not a mainstream religion. We were told that meals should not be taken back to the unit now that the kitchen microwave is working properly. This regulation in no way "violates", as you say, the "original agreement", with or without your consent.

The Religious Services Department has granted the permission for the Kosher meals, but you must abide by the norms and regulations of the Food Service Department as to the acquiring of the meals. The releasing of any inmate after 9:15 PM lockdown for purposes of cooking a meal violates security regulations and is certainly out of the realm of the Religious Services Department.

Inmates are not permitted to have candles in their possession. The former Jewish inmate you refer to had candles sent to the Chaplain by his sister. These were used only on the Jewish Festival of Chanukah (Hanukkah), by special arrangement. In no way can candles be made available, and certainly not for use every Sabbath.

I truly regret that the House of Yahweh is not a mainstream religion because that would help us to come to a more agreeable resolution of some of your requests.

/s/ Father Griffin, Chaplain
Rev. Charles Griffin, Chaplain
Ross Correctional Institution

RELIGIOUS SERVICES, RCI.

cc: Judy Hill, Food Service Supervisor
Mike Randle, Deputy Warden, Administration
Capt. Danny Payne, 2nd Shift Commander

[Portions of this document were redacted to protect privacy of inmate recipient of this document]

PLAINTIFFS' APPENDIX H

WICCA

The Ancient Way

Janus-Mithras
Nuit-Hilaria
and
Mer-Amun

Published by:
IllumiNet Press
Division of I-Net Group, Ltd.
P.O. Box 2808
Lilburn, GA 30226

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Canada M4W 3E2

Runelore
A Handbook of
Esoteric Runology

Edred Thorsson

SAMUEL WEISER, INC.
York Beach, Maine

The Well of
Remembrance

Rediscovering the Earth Wisdom
Myths of Northern Europe

RALPH METZNER

with contributions by
BARBEL KREIDT
NORBERT MAYER
CHRISTIAN RÄTSCH

Foreword by
MARIJA GIMBUTAS

Shambhala • Boston & London • 1994

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of WITCHES

CELEBRATING THE GODDESS
AS A SOLITARY PAGAN

JANET THOMPSON

SAMUEL WEISER, INC.
York Beach, Maine

THE

BOOK OF BLACK MAGIC
INCLUDING THE RITES AND MYSTERIES
OF GOËTIC THEURGY, SORCERY, AND
INFERNAL NECROMANCY

BY

ARTHUR EDWARD WAITE
AUTHOR OF "DEVIL-WORSHIP IN
FRANCE", ETC., ETC.

WITH ILLUSTRATIONS

SAMUEL WEISER, INC.
York Beach, Maine

THE MAGICIAN'S
WORKBOOK

A MODERN GRIMOIRE

STEVE SAVEDOW

SAMUEL WEISER, INC.
York Beach, Maine

RITUAL BOOK OF MAGIC

Compiled and Edited by

Clifford Bias

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Samuel Weiser, Inc.
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York Beach, Maine 03910

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TO OPEN THE BLIND EYES, TO BRING OUT THE PRISONERS FROM THE PRISON, AND THEM THAT SIT IN DARKNESS OUT OF THE PRISON HOUSE.

ISAIAH 42:7

THE WAY

Issue #28 **1997**

Church Of Jesus Christ Christian •
Prisoner Outreach Newsletter

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CHURCH of JESUS CHRIST CHRISTIAN
ARYAN NATIONS TEUTONIC UNITY

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PLAINTIFFS' APPENDIX I

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

John Miller, et al., Plaintiffs,	Case No C2-98-275
v.	Judge Sargus
Reginald Wilkinson, et al., Defendants.	Magistrate Judge Kemp
	CLASS ACTION

STIPULATION OF PARTIES

(Filed May 3, 2000)

The Parties hereby stipulate that, for the purposes of the above-captioned lawsuit only, the ancient Nordic religion of Asatrú and related sects of Asatrú are an authenic and genuine religion. Accordingly, neither Party will present evidence in this case as to genuineness or lack of genuineness of the Asatrú religion.

Respectfully submitted,

/s/ Todd Marti
Todd R. Marti (0019280)
Trial Counsel for the Defendants
Assistant Attorney General
Corrections Litigation Section
140 East Town Street, 9th Floor
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PLAINTIFFS' APPENDIX J

AFFIDAVIT OF ALFAR KYNWULF, a.k.a., DARRYL BLANKENSHIP

STATE OF OHIO : ss
COUNTY OF WARREN

Now comes Alfar Kynwulf, a.k.a. Darryl Blankenship, and being advised as to the penalty of perjury does hereby certify that:

1. That on April 11, 2000, Major Mockabee entered my cell at the Warren Correctional Institution, where I am incarcerated as a state inmate, and removed from my cell various drawings and depictions of the Gods and Goddesses of the Asatru religion, as well as several pages of religious poems and prayers.

2. That on April 11, 2000, I filed a grievance against the removal of my drawings, prayers and poems from my cell and asked that same be returned (Grievance no. 04-00-08). On May 1, 2000, the Institution Inspector (Mr. DeHart) denied my grievance, but did acknowledge that Major Mockabee was in possession of my religious drawings, prayers and poems, and stated same would be returned to myself if appropriate. On May 3, 2000, I appealed this matter to the Chief Inspector at Central Office. On June 6, 2000, the Chief Inspector affirmed the decision of the Institution Inspector.

3. That twice during the month of June, 2000, I wrote to Warden Anthony Brigano requesting that the institution comply with Ohio law (R.C. 5120.42.7 & 5120.42.8) and Ohio Administrative Regulations (5120-9-19), by informing me of the reasons my religious drawings, poems and prayers were being withheld, and by allowing me to appeal the decision to withhold my materials to the Publication Screening Committee at Central Office. Warden Brigano refused to answer or respond to my letters and requests.

4. That on July 28, 2000, I filed a grievance against Warden Anthony Brigano due to his failure to abide by Ohio law (R.C. 5120.42.7 & 5120.42.8) by notifying me of the reasons for the withholding of my religious drawings, poems and prayers, and in failing to allow me to appeal same (Grievance no. CI-01-40). On September 29, 2000, the Chief Inspector denied my grievance against Warden Brigano, stating that a more appropriate remedy would be for me to write the Institutional Inspector a follow-up letter to my grievance and ask for the return of my religious items.

5. That twice in the month of October, 2000, I wrote letters to Mr. DeHart, the Institution Inspector, and asked

that the institution either return my religious material to myself, or in the alternative, that they abide by Ohio law (R.C. 5120.42.7 & 5120.42.8) and give me notice of the reasons they were withholding my religious material and allow me to appeal this decision to withhold to the Publication Screening Committee at Central Office. Mr. DeHart responded stating that he would inquire with Major Mockabee as to this matter.

6. That on November 20, 2000, I wrote Mr. DeHart, the Institution Inspector, a three page letter asking that my religious materials be returned to myself, or in the alternative, that the institution abide by Ohio law (R.C. 5120.42.7 & 5120.42.8) by informing me of the reasons why my religious drawings, poems and prayers were being withheld, and allow me to appeal this decision to withhold to the Publication Screening Committee at Central Office. On November 27, 2000, Mr. DeHart responded with a note in the margin of my kite stating: "THESE ITEMS HAVE BEEN REFERRED TO MR. MATT MEYERS THE ODRC STG COORDINATOR. UPON REVIEW HE MAY RETURN THEM." (Attached hereto as exhibit A).

7. At no time since the confiscation of my religious materials on April 11, 2000, has the institution abided by Ohio law (R.C. 5120.42.7 & 5120.42.8), by informing me as to the reasons why my religious drawings, poems and prayers were being withheld, nor have I been permitted to appeal the decision to withhold same to the Publication Screening Committee at Central Office.

8. Under the penalty of perjury and pursuant to 28 U.S.C. section 1746, I hereby certify the foregoing to be true and correct. Executed on this 11th day of December, 2000.

Respectfully,

/s/ Alfar Kynwulf/Darryl Blankenship
Alfar Kynwulf, a.k.a.
Darryl Blankenship # 295-771
Warren Correctional Institution
P. O. Box 120
Lebanon, Ohio 45036

Exhibit A

[Handwritten Note and Response]

11/20/00

Mr. DeHart:

Enclosed please find my third follow-up letter to grievance numbers 04-00-08 and CI-01-40.

Thank you,

/s/ Alfar Kynwolf
Alfar Kynwolf a.k.a.
Darryl Blankenship
295-771
2c-137

11/22/00

These items have been referred to Mr. Matt Meyers the ODRC STG Coordinator upon review he may return them.

/s/ DeHart

[Return]

Blankenship
Number: 295-771 Name Kynwolf Date 11/20/00

Unit 2c LOCK 137 ASSIGNMENT 2C Library Aide

TO Mr. DeHart, I.I.S.

ISSUED BY McPherson Nov. 27, 2000

State Business in Kite and Reason for Interview.

* * *

KITE PROCEDURE

1. *Check with your Correctional Counselor, or Case Manager to see if this communication can be handled with out a kite.*
2. *Write only to the Office that handles the problem you have. Other Offices will merely forward your kite.*
3. *State your problems clearly and completely and thereby get immediate attention.*
4. *Avoid duplication of Kites, writing to more than one office about the same thing will not obtain any faster attention.*
5. *Kites are to be used only for communication between resident and Staff and not for any other purpose.*

* * *

PLAINTIFFS' APPENDIX K

[Pg. from ODRC Publication for grant for Corrections Boot Camp for Non-violent Offenders Construction.]

ASSURANCES – CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington, DC 20503.

PLEASE *DO NOT* RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET, SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. **Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.**

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.

4. Will comply with the requirements of the assistance awarding agency with regard to drafting, review and approval of construction plans and specifications.

5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.

6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

7. Will establish safeguards to prohibit employees from [illegible] their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

10. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 880-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686) which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107) which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 93-255), as amended, relating to non-discrimination of the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to the confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the

sale, rental or financing of housing; (i) any other non-discrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements on any other non-discrimination Statute(s) which may apply to the application.

PLAINTIFF'S APPENDIX L

Application – Tier 1
Violent Offender Incarceration and Truth-in-Sentencing Program
State of Ohio

INTRODUCTION

Ohio continues to experience substantial growth in adult incarceration at the State and local level, as well as an expanding juvenile offender population. Ohio faces major challenges in our mission to protect Ohio citizens by ensuring effective supervision of adult and juvenile offenders in environments that are safe, humane and appropriately secure. While accomplishing this mission we also seek to instill in offenders an improved sense of responsibility and the ability to become productive citizens.

The Ohio Department of Rehabilitation and Correction (ODRC) currently houses over 48,000 prisoners (48,080 as of December 1998) in 31 institutions with the rated capacity of 35,390 beds (based on revised ACA standards for rated capacity). The persistent increases in inmate population and severe crowding magnify the physical plant issues that face the Department. The Governor, State Lawmakers and ODRC have responded to the challenge with increased capital expenditures, new and innovative

programming and community correction initiatives. However, the deterioration of older physical structures; over-extended demands on utilities and service areas, such as food and laundry; and the need for more stringent security due to the increased number of potentially violent inmates are needs that must be addressed.

Jail crowding continues to be a problem for local officials in Ohio. Crowded jails and failing physical plants are difficult to manage and hamper a jurisdiction's ability to operate in a safe, secure and constitutional manner. At the end of 1997 the average daily population in Ohio jails totaled 14,519 which represents a nine-percent increase from the previous year. This figure significantly understates the need because there were an estimated 12,488 sentenced offenders waiting to serve their sentence in a county jail. Outdated facilities that fail to comply with modern fire and building codes create a danger to staff, visitors and inmates. Nine jails in Ohio have not been upgraded or expanded since the 1800's. Additionally, the impact of Ohio's Truth-in-Sentencing legislation will likely escalate jail crowding beyond the year 2004.

The Ohio Department of Youth Services (ODYS) operates nine juvenile correctional facilities and two treatment centers one is currently under construction. The design capacity of these facilities is 1,408. The average daily population of these facilities hovers near 1,900 male and female offenders, or 142% of capacity. The Department also

* * *

PLAINTIFFS' APPENDIX M

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN W. GERHARDT, Plaintiff, v. ALAN LAZAROFF et al., Defendants	CASE NO. C2-95-517 JUDGE SARGUS Magistrate Judge Kemp REPORT OF PLAINTIFF'S EXPERT Charles M. Montgomery JULY 13, 1999 (Preliminary Draft)

I. INTRODUCTION:

I have been retained as a career correctional practitioner who has worked in, managed, and administered a number of penal facilities including those that were in need of reformation to serve as an independent expert for the Plaintiff in the above captioned case. Essentially, I have been asked to render opinions as to whether there is a valid, rational connection between the defendants' refusal to permit Mr. Gerhardt to receive certain literature from the Church of Jesus Christ Christian (CJCC) and legitimate penological interests. I have also been asked to render my opinions as to whether there is a valid, rational connection between the defendants' refusal to permit Mr. Gerhardt to organize and participate in the CJCC religious services and any legitimate penological interest. Finally, I have been asked to render my opinions as to

whether Mr. Gerhardt has been denied reasonable access to his constitutional right to free exercise of religion.

II. QUALIFICATIONS, BACKGROUND, AND EXPERIENCE:

I believe I am well qualified to testify as an expert witness in this case by virtue of my education, training, and experience. I have been actively involved in federal, state, and commonwealth corrections for more than 34 years. During that time I have held a number of progressively responsible positions from line staff correctional officer to warden (at the institution level), and branch chief, division manager and director of institution operations at the central office level. Essentially, I have experience in virtually every type of penal facility from community corrections to maximum security housing, long and short term detention, and death row.

POSITION (Chronological order)	LOCATION	FROM	TO
Federal Bureau of Prisons			
Correctional Officer	Lompoc, CA	8/64	8/65
Senior Officer	"	8/65	4/69
Liaison Officer (Counselor)	"	4/69	10/69
Assistant Personnel Officer	"	10/69	10/70
Employee Development Specialist	"	10/70	2/72
Instructor STC	Atlanta, GA	2/72	9/72
Senior Instructor STC	"	9/72	3/73
Unit Manager	Seagoville, TX	3/73	10/74
Executive Ass't to the Warden	Lompoc, CA	10/74	1/76
Director CTC Complex	Detroit, MI	1/76	1/78
Superintendent	Safford, AZ	1/78	6/80
Warden, Georgia State Prison	Reidsville, GA	6/80	7/82

Associate Warden, Operations	Petersburg VA	7/82	1/83
Associate Warden, Programs	"	1/83	9/83
Chief of Unit Management,	Washington D.C.	9/83	11/85
Special Ass't, Federal Prison Industries (FPI)		11/85	3/86
Division Manager, UNICOR (FPI)	"	3/86	8/87

Over the years, I have provided technical assistance to numerous states and the Commonwealth of Puerto Rico as a private consultant, through the auspices of the National Institute of Corrections, the ACLU/National Prison Project, the National Academy of Corrections, and throughout my tenure with the Federal Prison System.

III. POST RETIREMENT FROM FEDERAL BUREAU OF PRISONS:

26. Consultant, Ford v The State of New York, Serious Assault, 99
25. Consultant, Gaines v Bellino, Hudson Co., NJ, Sex. Harrass., 99
24. Consultant, Turay v Washington, DOH, Serious Assault, 99
23. Expert Witness, Holder, v Harding, FBOP (DAN), Cross-Gender, 99
22. Consultant, Gerhardt v Lazaroff et al., Ohio, Religion, 99
21. Consultant, Daughtry v New York City, Inmate Assault, 98
20. Consultant, Weeks v Montana – Staff Assault by Inmate, 98
19. Consultant, Eakins v Chaffee (Calif.) – Excessive UOF, 98
18. Consultant, Krausch M. v Arizona – Improper Strip Search, 98
17. Expert Assistance, Coiner v U.S. – Witness Protection, 97

16. Consultant, Krausch P. v Arizona – Protective Custody, 97
15. Consultant, Sheppard v Phoenix (II), NYC – Excessive Force, 97
14. Consultant, Davis v City of Greenville, MS. – Malfeasance, 96
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12. Consultant, Maine v Oklahoma, Employee – Rape/ Civil Rights, 96
11. Expert Witness, Settle v Savage, AZ – Protective Custody, 96
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8. Consultant, Rosa Myhre v Montana – Wrongful Death, 94
7. Expert Witness, Morales-Feleciano v Colon, PR – Total Cond., 6 yrs
6. Consult. for the National Institute of Corrections – Umgt., 87
5. Consult. for the State of South Dakota – Unit Management, 87
4. Expert Witness, Small v Martin, NC – Overcrowding, 87
3. Consultant for the State of MS – Classification/ Umgt., 87
2. Contract Instructor, NAC, Boulder, CO – Inmate Classification, 87
1. Interagency Loan (Warden) Guthrie v Evans, GA – Total Cond., 2 yrs

Court Testimony: 4, 7, 11, 23
Grand Jury: 1
Depositions: 9, 11, 12, 13, 15, 19, 21, 23
Case Settled: 8, 9, 11, 12, 13, 14, 19

IV. EDUCATION AND TRAINING:

My education and training background include one enlistment in the United States Marine Corps as a legal clerk (1956-59) and a degree in Correctional Science from Allan Hancock College, Santa Maria, California in 1969. During my tenure with the Federal Bureau of Prisons I personally received more than 2,000 hours of formal training, and participated in thousands of hours of additional training, in a variety of areas including Accreditation, Custody, Security and Control, Firearms, Self Defense, Riot Control, Hostage Negotiations, Correctional Counseling, Inmate Classification, Prison Gangs, Personnel Procedures, EEO Counseling, Investigations, Helping and Human Relations, Supervision and Group Performance, Unit Management, Executive Management and Quality Control as well as a number of interrelated subjects. I have also completed a number of speciality courses at the Wharton School of Management in Pennsylvania, John Jay College in New York, and through the auspices of the United States Civil Service Commission. I was a participant in the first (30 day) National Human Resource Development Institute that was sponsored by the American International College and the Federal Bureau of Prisons. Based on my proficiency and practical application of those human resource development techniques which had been developed by Robert R. Carkhuff, Ph.D., I was selected to serve as the primary instructor and program coordinator for the second (30 day) National HRD Institute that was conducted in Springfield, Massachusetts during the month of August, 1971. I was also a presenter of these same HRD techniques at the national American Correctional Association Convention which was held in Cincinnati, Ohio in 1971. I currently hold a provisional

teaching certificate in correctional science for community colleges in the State of Arizona. Finally, I believe the number of hours training and/or experience I have gained via OJT, as an instructor, at work conferences, as a consultant, and/or via self-study, etc., are essentially incalculable.

As part and parcel to my experience as a career correctional practitioner I have written numerous custodial policy and procedures including operational manuals in the areas of correctional counseling and unit management and I have been involved in the development of countless other policies and procedures. I also had functional responsibility for the development of two classification documents in the Commonwealth of Puerto Rico, one for sentenced prisoners and another for pre-trial/unsentenced prisoners. I have also written and/or coauthored a number of articles which have appeared in the following abstracts and publications: i.e., The Carkhuff Training Program, as Chapter 4 in the book entitled, The Crumbling Walls (Hosford and Moss), Training As A Preferred Treatment Alternative which appeared in the Symposium On Group Procedures – Helping The Public Offender (sponsored by the Georgia Department of Offender Rehabilitation), an article entitled Human Resource Development (HRD) Applications and Challenges to Corrections Workshop For Master Trainers and Consultants (in interpersonal skills for corrections) that was sponsored by Georgia State University and I have also contributed to the nationally renown Classification Manual for Managing Adult Inmates, by Herbert C. Quay, Ph.D..

V. COMPENSATION AND TESTIMONY AT TRIAL/ DEPOSITION:

I am being compensated at a rate of $100 per hour (plus routine expenses) for all work including the review of documents in preparation for testimony, depositions, and court/trial testimony.

VI. PREAMBLE TO MY FINDINGS IN THIS CASE:

The issue of uniqueness and/or the differences between the various types of custodial facilities, whether they be federal or state – prisons or jails, always seems to be raised in every case in which I have been involved. The fact of the matter is that the fundamental mission of every jail/penal facility in the United States is the protection and safety of the public, institution staff, and inmates, *period.* Consequently, I invariably concentrate my efforts on those custodial practices and procedures I believe have universal application and/or relevancy across the board. Thus, I will begin this portion of my report by paraphrasing several key operational practices and procedures I believe have particular relevancy to the Plaintiff and the Defendants' in this case as well as every other correctional/penal facility in the USA.

(1). Written policy, procedure, and practice provide that inmates have the opportunity to participate in practices of their religious faith that are deemed essential by the faith's judicatory, limited only by documentation showing threat to the safety of persons involved in such activity or that the activity itself disrupts order in the institution.

Comment: Religious practices include, but are not limited to, access to religious publications, religious symbols, congregate worship/religious services in appropriate space,

individual and group counseling, religious study classes, and adherence to dietary requirements. (Excerpts – American Correctional Association Standard 3-4459. Related Standards include 3-4460, and 3-4463, Standards for Adult Correctional Institutions, 3rd Edition)

Inmates *shall* have access to religious publications and the opportunity to adhere to dietary restrictions, etc. of their respective faiths if these activities do not jeopardize the security of the institution. (Excerpt, V., C., ACA Sample Policy 4.23.1)

(2). The Reasonable Relationship Standard: When a prison regulation impinges on inmates' constitutional rights, the regulation is valid only if it is reasonably related to legitimate penological interests. (Turner v. Safley, 482 U.S. 78, 89 107 S.Ct. 2254, 1987)

(3). A presumption of legitimacy attaches to newly formed religious groups, but the presumption may be rebutted by conduct which demonstrates that the religion is not authentic. (Excerpt – Religious Services, 001, Federal Standards For Corrections, U.S. DOJ)

(4). A detained or imprisoned person shall have the right to obtain within the limits of available resources, if from public sources, reasonable quantities of educational, cultural and informational material, subject to reasonable conditions to ensure security and good order in the place of detention or imprisonment. (Principle 28, Body of Principles For The Protection of All Persons under Any Form of Detention or Imprisonment, Human Rights and Law Enforcement, Centre For Human Rights, United Nations)

(5). Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change

his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in teaching, practice, worship and observance.

(Universal Declaration of Human Rights, Article 18, and The American Convention on Human Rights, Article 12, Human Rights and Law Enforcement, Centre For Human Rights, United Nations)

Finally, the First Amendment to the Constitution protects the free exercise of religion and the Supreme Court has held that reasonable opportunities must be afforded to all prisoners to exercise the religious freedom guaranteed by the First and Fourteenth Amendments without fear of penalty (Cruz v. Beto, 1972). In order to be protected by the Free Exercise Clause, beliefs must meet two requirements:

1. They must be religious, and
2. They must be sincerely held.

(Prisoners' Self-Help Litigation Manual, Boston/Manville, 3rd Edition, 1995)

While I recognize that the State of Ohio may not be *legally* bound to comply with the "universal standards" I have used, in part, to base/illustrate my opinions – I make reference to them for four specific reasons:

(A). As a fact finder I believe I am compelled to base my opinions and conclusions on something more than my personal preferences/biases.

(B). The standards I have alluded to above were developed and have been endorsed by some of the best minds in the field of corrections over the past 30 years.

(C). I believe the illustrations I have used have universal application and/or relevancy across the board nationally.

(D). I believe the standards I have used form a context for considering whether particular restrictions are rationally related to any legitimate penological interests.

VII. BACKGROUND/OVERVIEW OF THE CASE:

Essentially, the fundamental facts of this case as I understand them at this time are as follows: John W. Gerhardt is presently incarcerated in the Orient Correctional Institution in Pickaway County in the State of Ohio. Mr. Gerhardt is a member of the Church of Jesus Christ Christian.

In 1973 John W. Gerhardt was ordained as a minister through the Mountain Church of Jesus Christ, of Howell, Michigan. Subsequently, he was ordained as a minister by the Christian Identity Church.

As I understand it, the Christian Identity Church asserts religious doctrines which it believes are based upon the Holy Bible. Included among its biblically-based doctrines is a belief in the non-violent separation of the races. Mr. Gerhardt is a Caucasian of non-Jewish descent. *(The Way,* Issue #26, Pages 6-8)

The Christian Identity Church issues several publications, including *The Way* which is a Prison Outreach Newsletter.

In the past, Mr. Gerhardt has sought to have Christian Identity religious services conducted within the *Orient Correctional Institution* for his benefit and for the benefit of co-religionist therein.

Essentially, the Defendants have denied, in their *Answer With Jury Demand* (12/97), each and every substantiative allegation including whether John Gehardt is a member of the Church of Jesus Christ Christian (for lack of knowledge). They have also denied the siezure/rejection of *The Way* publication, and that Mr. Gerhardt has been punished or retaliated against in any way as a result of his attempts to receive religious materials, etc.

Note: I have not been provided with any documentation that would support the Defendants position in this regard.

VIII. PRIMARY BASES FOR MY OPINIONS:

It is my understanding that: (1) a fact finder may conclude that a prison or jail official knew or should have known about substantial operational and/or security problems from the very fact that said problems were obvious and, (2) whether a prison official had the requisite knowledge is a question of fact subject to demonstration in the usual ways, including inference from circumstantial evidence.

(1). "An inmate may receive a reasonable number of printed materials directly from a publisher or distributor. Such materials may be received from other sources such as the inmate's family or friends with prior approval of the managing officer or designee. All materials are subject to security inspection and review pursuant to this rule." (Baldwin's Ohio administrative Code, Approved Edition

5120. Department of rehabilitation and Corrections Chapter 5120.9 Institutions, June 30, 1998)

(2). "Printed material, to be excludable, must be obscene or inflammatory." (Same Citation)

(3). "The printed material is inflammatory if it would be detrimental to the security, good order or discipline of the institution, or would facilitate criminal activity." (Same Citation)

(4). "No publication shall be considered inflammatory solely on the basis of its appeal to a particular ethnic, racial, or, religious audience." (Same Citation)

(5). "All printed material which the mail office reasonably believes to be either obscene or inflammatory shall be withheld from the inmate. The mail office shall promptly notify the inmate of the identification of the printed material, the reason for its being withheld, and the inmate's right to a review by the managing officer or designee." (Same Citation)

(6). The inmate may request a review of the mail office's decision to withhold the printed material. The printed material shall be forwarded to the managing officer or designee. (Same Citation)

(7). Within five working days or as soon as practical after receipt of the printed material, the managing officer or designee shall decide whether the printed material is acceptable. (Same Citation)

(8). A decision to exclude the printed material shall be in writing, setting forth that the material is either obscene or inflammatory, or both, and the reason(s) therefore. A copy of such written decision shall be forwarded promptly to the

inmate together with notice of the inmate's right to request, within five working days, review by the publication screening committee. (Same Citation)

(9). Failure of the inmate to request review of the mail office's decision to withhold the printed material, within five working days of notice thereof, shall constitute acceptance of that decision and the printed material shall be disposed in accordance with paragraph (H) of this rule. (Same Citation)

IX. PRIMARY FINDINGS AND CONCLUSIONS:

(01). From its very inception in 1870 the American Correctional Association has recognized and emphasized the role of religion in the correctional process. It is no coincidence that "penitentiary" and "reformatory" are religious terms connoting penance and spiritual inspiration for reforming offenders. (ACA Manual of Correctional Standards, 1971).

(02). The light of reasoning and experience has led me to conclude that Religion can be one of the most important ingredients in the overall successful re-integration process (back into the free community). Indeed, for some I believe it may very well be the single most important ingredient. (e.g., Chuck Colson)

(03). Based upon my experience over the past 35 years I believe every reasonable effort must be made to accommodate religious diversity in every penal facility in the United States of America. In spite of the Supreme Court's ruling against the well intended Religious Freedom Restoration Act of 1993 I do not believe it was the court's intent to elevate administrative convenience per se above

the duty to fully justify substantial restrictions on religious publications/worship.

As noted earlier, the Ohio State Administrative Code clearly states that "No publication shall be considered inflammatory solely on the basis of its appeal to a particular ethnic, racial, or religious audience" (Baldwin's Ohio Administrative Code, Approved Edition 5120. Department of Rehabilitation and Corrections Chapter 5120.9 Institutions, June 30, 1998)

(03). The Church of Jesus Christ Christian-Arayan Nations (CJCC/AN) is indeed a lawfully established Christian Identity Church so recorded by the State of Idaho, Department of State.

(04). I have read every line of *THE WAY* in Issues Number 9, 25, 26, 28, 29, 30 and 31 and I have found nothing contained in these Newsletters that should pose a threat to institution security, good order or discipline:

A). I did not find it to he patently offensive, obscene or sexual.

B). I did not find it to be any more inflamatory than the teachings of Malcolm X, or Louis Faarrakan, etc.

C). I found nothing contained therein which could facilitate criminal activity.

D). I found nothing contained therein that would incite any more physical violence than that which has been articulated by a number of other religions.

(06). Essentially, I found *THE WAY* to be both religious and political. Indeed, I found it to be as much akin to

William F. Buckley's *National Review* magazine as any religious publication I have read.

Note: On the editorial page of *The Way,* issue #25, Pastor Richard G. Butler refers to three specific publications; i.e., *The Way,* our Prisoner Outreach Newsletter; *Calling Our Nation,* our Flagship Publication; and *CJCC-AN Newsletter* all carry intriguing articles on Identity Christianity, history and "geo-politics" (which is the study/application of the influence of political and economic geography on the national power, foreign policy, etc., of a state).

(07). Although dedicated to the (non-violent) SAFEGUARD OF THE EXISTENCE AND REPRODUCTION OF THE WRITE RACE and the belief that all Aryan groups are linked by genetic heritage I do not believe the CJCC can, or should, be viewed in the same light as a number of self acknowledged militant/disruptive groups such as the Aryan Brotherhood, the Skinheads, and the Ku Klux Klan, etc..

(08). As I understand the racist/isolationist nature of CJCC's religious creed/manifesto it appears to be no more violent, disruptive, divisive, or exclusionary than those held by other equally devout groups. As a thirty-five year correctional practitioner I do not believe devout supporters of the CJCC should present any more of a problem for correctional administrators than does ardent, activist, and/or otherwise overzealous supporters of any other religious beliefs including Atheism, Christianity, Islam, Jehovism, Judaism, Mormonism, and Satanism, etc. In the 1960's Federal Correctional Administrators had to deal with a number of issues related to Muslim beliefs such as facial hair, Friday as their holy day, and the wearing of hijabs, etc.

(09). Obviously, it is virtually impossible to allow some prisoners to congregate or intermingle for security reasons. Likewise, it would he impossible to provide regular church services for each and every religious denomination or sect (regardless of size). Therefore, I believe the onus in on prison administrators to provide REASONABLE ALTERNATIVES to prisoners by which they can exercise the religious freedom that is guaranteed to them by the First and Fourteenth Amendments of the Constitution of the United States of America. This is why I place such a high emphasis on allowing prisoners to have access to printed materials such as "The Way". I believe this can reasonably be accommodated in a number of ways including restricted correspondence, self study, video and/or audio tape.

X. SUMMATION:

The bottom line is that I do not believe religious views/symbols which pertain to the *nonviolent* preservation of the white race per se should be discounted/excluded out of hand. Indeed, unless it can be demonstrated that the CJCC is or has been directly tied in with a Security Threat Group (STG), or some other activity which poses a legitimate threat to institution security and stability, I believe conscientious correctional professionals must learn to deal with the CJCC and other religious groups in an honest, straight forward manner.

In point of fact, I do not believe there is any rational basis by which to exclude said religious materials from the Orient Correctional Institution.

I RESERVE THE RIGHT TO MODIFY MY FINDINGS AND OPINIONS AS ADDITIONAL DETAILS BECOME AVAILABLE TO ME.

/s/ Charles M. Montgomery 7/13/99
CHARLES M. MONTGOMERY TODAY'S DATE

Appendixes A-C = Information considered in forming my opinions.

APPENDIX "A"

INFORMATION CONSIDERED IN FORMING OPINIONS

(01). Third Amended Complaint

(02). Appendix to Third Amended Complaint

(03). Defendants Answers With Jury Demand

(04). 5120-9-06 Inmate Rules of Conduct and Statement of Policy of Institutional Rules (4 pages)

(05). 5120-9-19 Printed Materials (4 pages)

(06). Issues Nos. 9, 25, 26, 27, 28, 29, 30 and 31 of THE WAY

(07). James Ricketts – Disclosure

(08). Matthew Meyer – Disclosure

(09). A number of relevant ACA Standards (3-4454 through 3-4463, Pages 155-157; 3-4432 & 3-4433, Pages 147-148)

(10). A number of relevant ACA Guidelines (Policies & Procedures, 4.23.1 & 4.23.2, Pages 443-449; 4.16-1 and 4.16.2 Pages 373-379)

(11). A number of relevant Federal Standards for Corrections (DOJ, Religious Services, 001-004; Mail & Visiting, 001-014)

(12). Human Rights and Law Enforcement, Center for Human Rights, United Nations, New York and Geneva (See Attachment "B")

(13). Memo to File Regarding telephone conversation with Mike Sandal, Correctional Services Administrator, Federal Bureau of Prisons, Western Region

(14). Prisoners' Third Edition Self-Help Litigation Manual (Publications, Pages 161-166; Religious Freedom, Pages 201-219; The Reasonable Relationship Standard, Pages 147-151)

(15). Code of Federal Regulations dated 7/1/97 (548-Religious Programs, Pages 522-524; Correspondence, Pages 451-457)

(16). ACA Publication "Point Counterpoint" 1998 (Pages 30-31)

(17). The Corrections Yearbook, 1998 (Pages 2, 13, 15, 20, 26, 28, 40, 42, 72, 130 and 148)

(18). ACA Directory, 1998 (Page 388)

(19). Proposed Administrative Rules 5120-9-19 (3/3/99)

(20). Printout of MISC Publication Screening Information

(21). Sign posted regarding job opening for "African-Americans"

ATTACHMENT "B"

INTERNATIONAL STANDARDS

There are a number of *international standards* which are applicable to all law enforcement personnel – including correctional officers. These particular standards have been promulgated by a number of bodies within the United Nations system. Foremost among those has been the periodic United Nations Congresses on the Prevention of Crime and the Treatment of Offenders. The adoption of these standards has given them the character of universality; i.e., they are accepted by the international community as a whole as the minimum rules for law enforcement/corrections personnel regardless of the legal system or municipal law framework of the member State.

The United States of America has ratified a number of international human rights treaties. It is therefore legally bound to comply with them. Additionally, many human rights requirements are contained in standards which have been adopted by the international community but which are not in the form of treaties. Although these standards do not technically have the legal power of treaties, they have the moral force of having been negotiated by governments and of having been adopted by political bodies such as the UN-General Assembly, usually by consensus. The United States of America has played a major part in drawing them up and agreed that they should be adopted.

(Amnesty International, Rights For All, 1998)

Excerpts from the International Standards on Ethical and Legal Police/Law Enforcement Conduct: (Note: The Code of Legal and Ethical Conduct for Law Enforcement Officials consists of eight articles beginning on Page 37, Paragraph 179)

Article 1 requires law enforcement officials to fulfill the duty imposed on them by law. The term "law enforcement officials" is defined as all officials who exercise police powers, especially powers of arrest or detention.

Article 2 requires law enforcement officials to respect and protect human dignity and maintain and uphold human rights.

Among the rights which are fundamental to democratic political processes and to the principles set out above are as follows: (Pages 42-43)

(i). The right to freedom of thought, conscience and religion

(ii). The right to freedom of opinion and expression

(iii). The rights to freedom of peaceful assembly and association.

Religious freedom is protected under article 18 in the following terms:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance. (272, Page 52)

Principle #1 in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment states:

> "All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person." (Pg 180)

(Human Rights and Law Enforcement, Center For Human Rights, United Nations, 1997)

APPENDIX "C"

January 19, 1999

MEMO TO FILE: CHURCH OF JESUS CHRIST CHRISTIAN/ARYAN NATIONS (CJCC/AN)

I contacted Mike Sandel, Correctional Services Administrator, Federal Bureau of Prisons, Western Region, 7950 Dublin, California, 94568 shortly before noon. (I knew Mike when he was the Chief Correctional Supervisor at FCI Sheridan, Oregon and Phoenix, Arizona)

(1). I asked, "Do you know if the Federal Bureau of Prisons recognizes the Church of Jesus Christ Christian which is essentially a white supremacy organization?"

Mike Sandel: Let me call you back.

Within the hour, Mike called back (presumably after checking with the WRO Administrator for Chaplaincy Services or someone else). He stated, "It is recognized as a legitimate religion that is aligned with the Christen Identity, but no meetings are allowed."

(2). I asked, "Do you know if the Federal Bureau of Prisons allows CJCC/AN's newsletter/publication "THE WAY," inside (federal prisons)?"

Mike Sandel: "I don't know for certain. It might be up to each institution. Let me put you on hold for a minute or two and I will check." (I remained on hold)

Shortly thereafter, Mike came back on the telephone and informed me that he had just placed a call to the SIS (Security Investigations Supervisor) at Sheridan, Oregon (where Mike had been previously assigned as the Chief Correctional Supervisor) and he informed me that, "They do allow the *The Way* in at FCI Sheridan."

Comment: Indeed, why shouldn't they – in my experience the BOP has always done its best to accommodate all religions/races; e.g., pork free diets, Kosher meals, and sweat lodges etc. Likewise, I believe they have allowed literature in from black supremacy advocates (and others) such as Louis Farrakhan and Malcolm X, etc. (During my tenure with the BOP these decisions were essentially made on an institution by institution basis. Many of these types of issues do not effect each and every facility in the same degree or manner)

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

JOHN MILLER, et al.,	:	**Case No. C2-98-275**
Plaintiffs,	:	**MAGISTRATE JUDGE KEMP**
v.	:	
REGINALD WILKINSON, et al.,	:	**CLASS ACTION**
Defendants.	:	
JOHN GERHARDT,	:	**Case No. C2-95-517**
Plaintiff,	:	**JUDGE SARGUS**
v.	:	**MAGISTRATE JUDGE KEMP**
ALAN LAZAROFF, WARDEN, et al.,	:	
Defendants.	:	

JOINT STIPULATIONS OF FACT RELATED TO DEFENDANTS' CHALLENGE TO THE CONSTITUTIONALITY OF THE RELIGIOUS LAND USE AND INSTITUTIONALIZED PERSONS ACT OF 2000

(Filed Mar. 19, 2001)

It is stipulated by and between all Plaintiffs and all Defendants as follows:

1. These stipulations are based on agreements reached between counsel and informal, unsworn personal and telephone interviews of Ohio Department of Rehabilitation and Correction ("ODRC") employees by

Counsel for the inmate Plaintiffs. The interviews were agreed to in lieu of formal discovery as a rapid and economical means to gather information relevant to Defendants' challenge to the constitutionality of the Religious Land Use and Institutionalized Persons Act ("RLUIPA") through their "Partial Motion[s]s to Dismiss" ("Defendants' Motion"). The Defendants did not object to or otherwise interfere with the Plaintiffs' ability to conduct formal discovery regarding the matters relevant to the Defendants' Motion. The information contained in these stipulations is not exhaustive and is not necessarily all of the relevant information which may be known or available to the Plaintiffs, the ODRC Defendants and others working under their supervision. The Parties may supplement the facts stipulated to in this document with additional evidence not inconsistent with the facts stipulated herein, and the parties' agreement to these stipulations shall in no way be considered to be a concession by the parties' of the inaccuracy or invalidity of the facts and evidentiary matters set forth in or in support of the Defendants' Motion and/or Plaintiffs'. However, the facts stipulated in this document are as binding on the parties as if they were found by the Court after a full evidentiary hearing.

2. As used in these stipulations, ODRC refers to all named defendants and persons working with them or under their supervision in their official capacities.

3. ODRC regularly applies for federal grants. Such grants are awarded by the funding agency, and ODRC subsequently receives federal funds pursuant to those grants. ODRC has received federal grant awards since September 22, 2000 but no funds including those described in paragraphs 4 through 9, inclusive, below, have been received through these awards. It is not anticipated that ODRC will receive any federal funds attributable to grants made and

accepted after September 22, 2000 until August 2001 at the very earliest.

4. Some federal grant funds are received by ODRC directly from the federal government, other federal funds are received as "Pass-Through" to ODRC from other State of Ohio Departments.

5. One federal grant received by ODRC is the Violent Offender Incarceration and Truth in Sentencing Incentive Grants ("VOI/TIS"). The current award is approximately $12,000,000. ODRC has received this grant for three successive years for a total of approximately $69,000,000 to date. The last time ODRC received a grant from the federal government was in November 2000. However, this grant was attributable solely to an application made and accepted before September 22, 2000. There will be a substantial time lag between the date that the application is granted and accepted and the time that ODRC receives any money pursuant to that grant. It is not anticipated that ODRC will receive any federal funds attributable to this grant until August 2001 at the very earliest. ODRC plans to reapply for this grant on an annual basis and will continue to do so. It is expected that future applications for this federal grant will be awarded annually as long as Congress continues to fund the applicable program.

6. ODRC receives an annual federal grant known as the State Criminal Alien Assistance Program ("SCAAP"). This grant reimburses ODRC for the costs of incarcerating aliens convicted of felonies in Ohio. The last annual grant award was for $1,300,000. That grant was awarded and accepted prior September 22, 2000. The most recent application for an additional SCAAP grant was submitted to the federal government during the summer of 2000 and is currently pending. The ODRC Defendants believe that the application

will be approved and granted. Such applications for federal grants generally take about nine months to be processed. Ohio's annual award under SCAAP is usually about $1,000,000 dollars. There will be a time lag between the date that the application is granted and accepted and the time that ODRC has access to any money pursuant to that grant.

7. There are other grants applied for annually that provide the ODRC Defendants with federal money on an annual basis. These include, but are not limited to, federal grants for adult basic education, special education and vocational education. The Defendants expect that they will be awarded, assuming that Congress continues to fund the applicable programs.

8. ODRC is currently reimbursed on a monthly basis by the federal government pursuant to at least two grants: the Federal School Breakfast Program with a current award amount of $437,141; and the Federal School Lunch Program with a current award amount of $777,983 Those reimbursements are and will be made pursuant to the grants made and accepted prior to September 22, 2000. ODRC has reapplied for these funds and will continue to do so. It is expected that ODRC will continue to receive federal funding for these programs as long as Congress continues to appropriate money for the programs.

9. ODRC routinely applies for and receives federal funds that it uses to pay for a portion of its programs, construction and operations costs. ODRC currently has applications for federal funds pending. These include: FY 2000 SCAAP. The applications being prepared for submission include: FY2001 VOI/TIS. There will be a substantial time lag between the date that the application is submitted, granted and accepted and the time that ODRC receives any money pursuant to that grant. That lag will be at least 6

months from a July 2001 submission date. The ODRC Defendants believe that some or all of these applications will be granted to the extent that Congress continues to fund the relevant grant programs.

10. ODRC operates a program entitled Ohio Prison Industries ("OPI"), partially described in paragraphs 10 through 15, inclusive, below. In this program, ODRC inmates produce goods and services, some of which are sold to buyers outside of the Ohio Department of Rehabilitation and Correction. The Plaintiffs do not claim that any aspect of OPI's operations substantially burden their ability to exercise their faith.

11. Since 1987, ODRC has had a contract with Unibase, a Utah corporation specializing in information technology. Under the terms of this contract, Ohio prison inmates at Lebanon Correctional Institution and London Correctional Institution perform data entry services for Unibase on computers located at the institutions where the inmates are incarcerated. Unibase pays ODRC for the inmates' work. Currently, 80-100 Lebanon Correctional Institution inmates and 50 London Correctional Institution inmates are working under the Unibase contract. Approximately 50 inmates at the Ohio Reformatory for Women are projected to start work under this contract in the near future.

12. ODRC sells some inmate produced products to departments of correction in other states. For example, the ODRC Defendants have sold shoe soles to the State of Oklahoma and cafeteria tables to the State of Maine.

13. Ohio inmates produce products such as shoes, beds, furniture, and mulch for agencies of the State of Ohio using raw materials and products produced outside

of Ohio. Many of these agencies pay ODRC for such products.

14. Ohio inmates also produce and recycle safety reflectors used on highways in Ohio and thereby save the state approximately $1 million dollars per year. The Ohio Department of Transportation pays ODRC for these reflectors.

15. Inmates assemble snowplows and salt spreaders for State use on vehicles already owned by the State of Ohio. ODRC is paid for this work.

16. 18 U.S.C. § 1761 restricts the interstate sale of inmate-made goods, but not services.

17. Each ODRC institution is responsible for most of its own purchasing.

18. Orient Correctional Institution ("OCI") officials periodically purchase computers and motor vehicles through interstate commerce. They purchased two motor vehicles during the last fiscal year. OCI purchasing is representative of the purchasing at the other penal institutions operated by ODRC, except those described in paragraphs 19 and 22-24, inclusive, below.

19. The combined cost of and medical supplies used at OCI and Pickaway Correctional Institution ("PCI") $2,000,000 per year. In addition, mental health medications for those institutions cost between $20,000 and $60,000 per month. These medications and supplies are purchased through interstate commerce. All institutions spend a significant amount of money on medicine and medical supplies. However, the amount spent on those goods and services at OCI and PCI is higher than the amounts spent at other ODRC institutions because Fraizer Medical Center is located at OCI.

20. OCI pays the non-Ohio companies of Ameritech and Quest approximately $1,800 and $500 per month, respectively, for local and long distance telephone service.

21. ODRC has an exclusive contract with MCI Communications, an interstate corporation, to provide all inmate telephone service, which consists of thousands of collect calls to locations inside and outside of Ohio. ODRC receives compensation from MCI Communications based on a percentage of revenue generated by these collect calls.

22. ODRC has contracts with Management and Training Corporation and CiviGenics Corporation to operate two prisons owned by the State of Ohio housing Ohio inmates. Management and Training Corporation is a Utah corporation which operates the Lake Erie Correctional Institution in Conneaut, Ohio ("LaECI"), and CiviGenics Corporation is a Massachusetts corporation which operates the North Coast Correctional Treatment Facility in Grafton, Ohio ("NCCTF"). Both corporations also operate privately owned prisons under contracts with other states. No Plaintiff has been or is incarcerated at either LaECI or NCCTF.

23. LaECI has 1,380 beds. Management and Training Corporation is currently paid a per diem of $36.40 per inmate. The per diem will increase to $38.04 shortly.

24. NCCTF has 552 beds, and CiviGenics is paid a per diem of $53.11 per inmate, which will increase to $55.39 on October 1, 2001.

25. According to a 1996 study by ODRC, 32.5% of inmates released from ODRC return to jail for a parole violation or for a new crime within three years. Of the persons released on judicial release, 29.1% return

to incarceration. Of the persons released on shock probation, 37.6% return to incarceration. Of the persons released on parole, 41.3% return to incarceration. Of the persons released from boot camp, 22.6% return to incarceration; and of the persons released on shock parole, 19.8% return to incarceration.

26. The State of Ohio is a member of an interstate corrections compact, pursuant to ORC § 5120.50. Under the interstate corrections compact, Ohio currently has agreements with twenty states providing for the exchange of prisoners between these states. Under the terms of these agreements, Ohio exchanges prisoners with other states on a regular basis. Presently, Ohio houses seventeen inmates convicted in other states and exchanged under the compact. Eighteen inmates convicted in Ohio are incarcerated in the prisons of other states. Ohio also has an agreement with the Federal Bureau of Prisons which provides for the exchange of inmates between federal and state institutions. Ohio is currently housing twelve prisoners sent by the Federal Bureau of Prisons, while ten Ohio convicts are incarcerated in federal detention facilities. The Plaintiffs do not claim that any aspect of this compact substantially burdens their ability to exercise their religion.

27. One reason that inmates convicted of Ohio crimes are housed in states other than Ohio is witness protection. Another is that some inmates pose security threats or behavior problems that ODRC has determined can best be handled by transferring inmates to prisons in other states.

28. Between January 1, 2000 and September 30, 2000, Ohio referred approximately 2,000 persons on probation or parole to supervision by the probation and parole authorities of other states pursuant to the

provisions of the applicable interstate compact, interstate agreements and Ohio statutes. The out-of-state probation and parole authorities accepted approximately 1,400 of these persons for supervision. This frequency of referral and acceptance of probationers and parolees is typical of the frequency of referrals and acceptances during similar periods of other years. Approximately 2,400 persons placed on probation and parole by other states are referred to Ohio for supervision each year pursuant to the applicable interstate correction compact. The State of Ohio accepts about 1,900 of these people for supervision annually. In all cases, supervision continues until each person's term expires or until there has been a probation or parole violation. The Plaintiffs do not claim this compact substantially burdens their ability to exercise their religion.

The foregoing 28 paragraphs of stipulations are approved and agreed to by:

BETTY D. MONTGOMERY
Attorney General

/s/ Todd R. Marti
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Counsel for Plaintiff in *Gerhardt v. Lazaroff.*

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IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

LEE HAMPTON, et al.,	:	**Case No. C2-97-382**
Plaintiffs,	:	**JUDGE GRAHAM**
v.	:	**MAGISTRATE JUDGE ABEL**
REGINALD WILKINSON, et al.,	:	
Defendants.	:	

SECOND AFFIDAVIT OF HORST GIENAPP

Now come Defendants and file the "Second Affidavit of Horst Gienapp", attached hereto.

Respectfully submitted,

BETTY D. MONTGOMERY
Attorney General

/s/ Todd R. Marti
TODD R. MARTI (0019280)
Assistant Attorney General
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(614) 644-7233

[Certificate of Service Omitted in Printing]

SECOND AFFIDAVIT OF HORST GIENAPP

State of Ohio :
: ss.
County of Franklin :

Now comes Horst Gienapp, having been first duly sworn, and states and affirms as follows:

1. I am the Grants Administrator for the Ohio Department of Rehabilitation and Correction ("ODRC") and have held that position since April 2, 1995. Among my duties are overseeing ODRC's efforts to obtain federal funding, including the process of applying for such fund and reviewing grant conditions and dealing with problems in the administration of grants. As a result of my duties in that position, I have personal knowledge of the matters set forth herein.

2. In my affidavit of October 23, 2000, I incorrectly stated that ODRC was receiving 27 separate federal grants as of September 22, 2000. That statement was incorrect. In fact, ODRC was only operating under 22 federal grants. Initially, I had miscounted the total number of grants considered. The correct total of those grants was in fact 26, not 27. Further, one of those grants had expired prior to September 22, 2000. That was the Library Services and Construction Act Grant. Finally, three other grants listed in that affidavit were made to ODRC by other agencies of the State of Ohio and involved no federal funds. Those grants were the Special Education-Unit Allocation (Reimbursement) Grant, the Adult High School Grant, and the GED Testing grant. Finally, I had miscounted the total number of grants, When those adjustments are made, ODRC was in fact receiving only 22 federal grants as of September 22, 2000.

3. The purposes of federal grants are set forth in one or both of two documents. The first is the *Catalog of Federal Domestic Assistance. ("CFDA"),* prepared and published jointly by the United States General Services Administration, the Executive Office of the President, and the Office of Management and Budget. The *CFDA* describes both the purposes of the grant and any restrictions on the permissible uses of grant funds. The CFDA is available to the general public in book form and on line at www.cfda.gov/default.htm.

4. The second source for determining the purpose of a federal grant is an individualized, written statement from the grantor agency to the recipient of the grant. Such a written statement sets forth the grantor agency's understanding of what the federal government is funding. Such statements are not made in all cases, and their format varies from grantor to grantor.

5. The first of the 22 federal grants received by ODRC is the Intensive Confinement Construction Grant. The *CFDA* indicates that the grant's objective is to help state and local governments build or expand correctional facilities. The grantor agency is the United States Department of Justice ("USDOJ"), and its individualized statement of the purpose of the grant is that "grant funds will be used for site improvements and interior construction costs." The funds are used exclusively for construction purposes, and inmates are in no way involved with the expenditure of those funds. See Exhibit 1 hereto. The *CFDA* description of this program is available on line at www.cfda.gov/public/viewprog.asp?progid=535

6. The second of the 22 grants received by ODRC is an Immigration and Naturalization Service video teleconferencing grant. The *CFDA* states that the purpose of that grant is to "improve cooperative efforts between law enforcement agencies . . . through the

use of technology." Consistent with that purpose, ODRC has used grant funds exclusively to purchase videoconferencing technology to allow prisoners to participate in immigration and other hearings held at other locations without having to leave prison. The *CFDA* description of this program is available on line at www.cfda.gov/public/viewprog.asp?progid=559.

7. The third of the 22 federal grants received by ODRC is a grant for reducing correctional officer stress. The grantor agency is USDOJ, and its individualized statement indicates that the purpose of the grant is "to implement a comprehensive stress-reduction program for corrections officers in five Ohio correctional facilities and their families." The grant funds are used exclusively for staff and are not in any way used in connection with inmates. See Exhibit 2 hereto.

8. The fourth of the 22 federal grants received by ODRC is a grant to research the effect of Ohio's truth-in-sentencing legislation. The grantor agency is USDOJ, and that agency's individualized statement indicates that the "project will examine the impact of Ohio's new sentencing reform measures on inmate behavior within the institutional setting." The grant funds only research. It does not fund any programming and does not involve inmates in any way. See Exhibit 3 hereto

9. The fifth of the 22 federal grants received by ODRC is the State Criminal Alien Assistance Program ("SCAAP"). The *CFDA* indicates that SCAAP's objective is to "provide federal assistance to states . . . for costs incurred for the incarceration of undocumented criminal aliens convicted of a felony" and that "there are no restrictions on or prescribed use of the funds." The *CFDA* further indicates that SCAAP funds are "essentially assistance to defray the costs *previously* incurred by jurisdictions for the housing of undocumented criminal aliens." (emphasis added). In other

words, these funds have no federally specified purpose and ODRC utilizes those funds primarily for staff development. The *CFDA* description of this program is not available on line but is attached as Ex. 4 hereto.

10. The sixth of the 22 federal grants received by ODRC is the Violent Offender Incarceration/Truth-in-Sentencing Grant ("VOITIS"). The *CFDA* describes the purpose of this grant as being "to provide funds to individualized states . . . to build or expand [] correctional facilities to increase the bed capacity for the confinement of [] violent offenders." The grantor agency is USDOJ, and its individualized statement indicates that the grant is used exclusively for planning and constructing new prisons and jails. Those funds are used only for construction/acquisition related purposes, and inmates are in no way involved with the expenditure of VOITIS funds. See Exhibit 5 hereto. The *CFDA* description of this program is available on line at www.cfda.gov/public/viewprog.asp?progid=535

11. The seventh of the 22 federal grants received by ODRC is the Adult Basic Education Grant. The *CFDA* identifies the grant's objective as assisting the states "to provide, on a voluntary basis, adult education and literacy services." Although the program is federal, ODRC's grantor is the Ohio Department of Education. ("ODE"). The individualized statement prepared by that grantor indicates that ODRC's funds are to be used exclusively for educational purposes. I have received no reports of prisoners' religious activities or status in any way impeding the operation of this program. Similarly, I am aware of no instances where prisoners' religious beliefs or actions have interfered with their ability to participate in or benefit from this program. See Exhibit 6 hereto. The *CFDA* description

of this program is available on line at www.cfda.gov/public/ viewprog.asp?progid=945

12. The eighth of the 22 federal grants received by ODRC is a grant to provide educational assistance to delinquent and at-risk children in ODRC's custody. The *CFDA* indicates that the funds are restricted to "educational and educationally related services." I have received no reports of prisoners' religious activities or status in any way impeding the operation of this program. Similarly, I am aware of no instances where prisoners' religious beliefs or action interfered with their ability to participate in or benefit from this program. The *CFDA* description of this program is available on line at www.cfda.gov/public/viewprog.asp?progid=950

13. The ninth of the 22 federal grants received by ODRC is a grant made pursuant to Title VI of the Elementary and Secondary Education Act. The *CFDA* indicates that the use of grant funds is restricted to certain specified educational activities. ODRC uses those funds exclusively for staff development programs for employees engaged in its educational programming. Inmates are in no way involved with the use of these funds. The *CFDA* description of this program is available on line at www.cfda.gov/public/viewprog.asp?progid=1057

14. The tenth of the 22 federal grants received by ORDC is a special education grant made pursuant to the Individuals with Disabilities Education Act. It is used exclusively to assist in the education of disabled inmates. I have received no reports of prisoners' religious activities or status in any way impeding the operation of this program. Similarly, I am aware of no instances where prisoners' religious beliefs or activities interfered with their ability to participate in or benefit from this program.

15. The eleventh of the 22 federal grants received by ODRC is the grant for the vocational education of criminal offenders in correctional institutions. I have received no reports of prisoners' religious activities or status in any way impeding the operation of this program. Similarly, I am aware of no instances where prisoners' religious beliefs or actions interfered with their ability to participate in or benefit from this program.

16. The twelfth of the 22 federal grants received by ODRC is a grant pursuant to the Child Nutrition Act. That grant reimburses ODRC for portions of the costs of breakfast served to minors in its custody. The grant does not fund any programming but is used exclusively to defray the costs of meals already served to qualifying inmates. I have received no reports of prisoners' religious activities or status in any way impeding the operation of this program. Similarly, I am aware of no instances where prisoners' religious beliefs or actions interfered with their ability to participate in or benefit from this program.

17. The thirteenth of the 22 federal grants received by ODRC is a grant pursuant to the National School Lunch Act and, it is used to reimburse ODRC for portions of the cost of lunches provided to certain inmate It does not pay for any programming but only reimburses ODRC for a portion of the cost of meals previously served. I have received no reports of prisoners' religious activities or status in any way impeding the operation of this program. Similarly, I am aware of no instances where prisoners' religious beliefs or actions interfered with their ability to participate in or benefit from this program.

18. The fourteenth of the 22 federal grants received by ODRC is a grant whose objective, according to the *CFDA*, is "to assist incarcerated young offenders in

obtaining post-secondary education and post-secondary vocational training." Those funds are used exclusively for paying educational and vocational training expenses. I have received no reports of prisoners' religious activities or status in any way impeding the operation of this program. Similarly, I am aware of no instances where prisoners' religious beliefs or actions interfered with their ability to participate in or benefit from this program. The *CFDA* description of this program is available on line at www.cfda.gov/public/viewprog.asp?progid=1083

20. The fifteenth of the 22 federal grants received by ODRC is a grant pursuant to the Carl D. Perkins Act. Although that grant involves federal funds, it is a pass-through grant from ODE, and ODE is therefore the grantor. ODE's individualized statement of the purpose of those federal funds is "to support modernization efforts and equipment purchases." ODRC has used those funds exclusively to purchase hard assets for its educational activities. I have received no reports of prisoners' religious activities or status in any way impeding the operation of this program. Similarly, I am aware of no instances where prisoners' religious beliefs or actions interfered with their ability to participate in or benefit from t s program. See Exhibit 7 hereto.

21. The sixteenth of the 22 federal grants received by ODRC as of September 22, 2000, was a grant received pursuant to the Omnibus Crime Control and Safe Streets Act that was used to assist offenders in finding jobs upon release. This grant ended in the year 2000 and is no longer active. Further, all of the funds received pursuant to this grant were awarded and received prior to September 22, 2000, although some of those funds were spent by ODRC after that date.

22. The seventeenth and eighteenth of the 22 federal grants received by ODRC are grants for substance abuse treatment. The *CFDA* describes the objective of this program as "assist[ing] the states . . . [to] develop and implement residential substance abuse treatment programs." That is how ODRC has used those funds. I have received no reports of prisoners' religious activities or status in any way impeding the operation of this program. Similarly, I am aware of no instances where prisoners' religious beliefs or actions interfered with their ability to participate or benefit from this program. The *CFDA* description of this program is available on line at www.cfda.gov/public/viewprog.asp?progid=541

23. The nineteenth and twentieth of the 22 federal grants received by ODRC are funds disbursed under a separate grant for drug treatment programming. According to the *CFDA* those "[f]unds may be used to provide additional personnel, equipment, facilities (including upgraded and additional Law Enforcement Crime Laboratories), personnel training and equipment for more widespread apprehension, prosecution and adjudication of persons who violate State and local laws relating to the production, possession and transfer of Controlled Substances and to improve the Criminal Justice System." ODRC uses those to pay for Wright State University's development and delivery of drug treatment programming. I have received no reports of prisoners' religious activities or status in any way impeding the operation of this program. Similarly, I am aware of no instances where prisoners' religious beliefs or actions interfered with their ability to participate or benefit from this program. The *CFDA* description of this program is available on line at www.cfda.gov/public/viewprog.asp?progid=530

24. The twenty-first of the 22 federal grants received by ODRC is a crime victims' assistance grant made

pursuant to the Victims of Crime Act. Those funds are used exclusively to assist crime victims, and inmates are in no way affected by this grant.

25. The twenty second of the 22 federal grants received by ODRC is a grant from the Social Security Administration to compensate ODRC for time ODRC employees spend determining.which inmates are receiving Social Security benefits while in custody. This grant does not fund programming but simply reimburses ODRC for administrative expenses.

26. The documents attached as exhibits 1 through 7, inclusive, to this affidavit are true and accurate copies of the originals. The originals of those documents are records of ODRC setting forth the activities of ODRC and are kept in the ordinary course of ODRC's business. Copies of those documents were provided to counsel for the Plaintiffs in *Miller v. Wilkinson,* Case no. C2-98-275 (S.D. Ohio) and *Gerhardt v. Wilkinson,* Case No. C2-95-517 (S.D. Ohio) in January of 2001, as were copies of all CFDA descriptions of the grants described herein.

Further affiant sayeth naught.

/s/ Horst Gienapp
Horst Gienapp

Sworn to before me and subscribed in my presence this 12th day of April, 2001.

[SEAL]

/s/ Lynn A. Thompson
Notary Public

LYNN A. THOMPSON
Notary Public, State of Ohio
My Commission Expires Feb. 26, 2003

Exhibit 1

[SEAL] U.S. DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS ☒ OJP ☐ BJA ☐ OJJDP ☐ BJS ☐ NIJ ☐ OVC CHECK APPROPRIATE BOX	**GRANT MANAGER'S MEMORANDUM, PT. 1: PROJECT SUMMARY** ☒ GRANT ☐ COOPERATIVE AGREEMENT PROJECT NUMBER 95-SC-LX-0036

☐ This project is supported under Title I of the Omnibus Crime Control and Safe Streets Act, 42 USC 3701, as amended.

☐ This project is supported under the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

☒ Other: Violent Crime Control and Law Enforcement Act of 1994, 42.U.S.C. 13701 ET. SEQ

1. STAFF CONTACT
(Name, address & telephone number)
Ruth Cashmere, Program Specialist
Bureau of Justice Assistance
633 Indiana Avenue
Washington, DC 20531
(202) 307-3756

2. PROJECT DIRECTOR
(Name, address & telephone number)
Horst E. Gienapp
Ohio Department of Rehabilitation and Correction
1050 Freeway Drive North
Columbus, OH 43229-0000
(614) 752-1636

3a. TITLE OF THE PROGRAM
FY 1995 Corrections Boot Camp Initiative

3b. POMS CODE (SEE INSTRUCTIONS ON REVERSE)

4. TITLE OF PROJECT
Boot Camp Construction Initiative

5. NAME & ADDRESS OF GRANTEE
Ohio Department of Rehabilitation and Correction
1050 Freeway Drive North
Columbus, OH 43229-0000

6. NAME & ADDRESS OF SUBGRANTEE

7. PROGRAM PERIOD
FROM: 9/01/95 TO: 08/31/97

8. BUDGET PERIOD
FROM: 09/01/95 to: 08/31/97

9. AMOUNT OF AWARD
$1,736,164.00

10. DATE OF AWARD
September 30, 1995

11. SECOND YEAR'S BUDGET
N/A

12. SECOND YEAR'S BUDGET AMOUNT
N/A

13. THIRD YEAR'S BUDGET PERIOD.
N/A

14. THIRD YEAR'S BUDGET AMOUNT
N/A

15. SUMMARY DESCRIPTION OF PROJECT
(See instruction on reverse)

Funding is requested by the Ohio Department of Rehabilitation and Correction to design, develop, and implement a boot camp program for nonviolent inmates ages 18-30 employing a "therapeutic community approach to treating chemically dependent offenders." The initiative is compatible with department strategy "to manage prison crowding by expanding alternative forms of incarceration and community sanction options." A 125 bed facility is planned to complement the state's Shock Incarceration Program consisting of 2 boot camps (1 for males, the other for females) with a fourth project, a life skills camp, in the planning stage.

Boot camp participants will be processed through a three-phase program. Phase I consisting of 60 days institution-based military drill and substance abuse treatment; Phase II, 60 days placement in community-based halfway house with job and life skills training; Phase III, six months of supervised transition phase with continued emphasis on drug counseling and treatment completes the program cycle. The department projection targets 750 prison beds freed up for violent offenders when the four boor [sic] camp sites are fully operational.

A site plan for the boot camp facility shows space requirements for a self-contained physical plant with open dormitories, class rooms, office space and support service areas. Grant funds will be used for site improvements and interior exterior construction costs.

ca/ncf

Exhibit 2

[SEAL] U.S. DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS ☐ OJP ☐ BJA ☐ OJJDP ☐ BJS ☒ NIJ ☐ OVC CHECK APPROPRIATE BOX	**GRANT MANAGER'S MEMORANDUM, PT. 1: PROJECT SUMMARY** ☒ GRANT ☐ COOPERATIVE AGREEMENT PROJECT NUMBER 1999-FS-VX-0003

☒ This project is supported under Title I of the Omnibus Crime Control and Safe Streets Act, 42 USC 3701, as amended.

☐ This project is supported under the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

☐ Other:

1. STAFF CONTACT
(Name, address & telephone number)
Rebecca Childress
National Institute of Justice
810 7th Street, NW
Washington, DC 20531,
(202) 307-0200

2. PROJECT DIRECTOR
(Name, address & telephone number)
Horst E. Gienapp
100 Freeway Drive North
Columbus, OH 43229
(614) 752-1636

3a. TITLE OF THE PROGRAM
Correctional Law Enforcement Family Support

3b. POMS CODE (SEE INSTRUCTIONS ON REVERSE)

4.	TITLE OF PROJECT Reducing Correctional Officer and Family Stress in Ohio through Organizational Interventions
5.	NAME & ADDRESS OF GRANTEE Ohio Department of Rehabilitation and Correction 1050 Freeway Drive North Columbus, OH 43229
6.	NAME & ADDRESS OF SUBGRANTEE
7.	PROGRAM PERIOD FROM: 1/01/2000 TO: 06/30/2001
8.	BUDGET PERIOD FROM: 1/01/2000 TO: 06/30/2001
9.	AMOUNT OF AWARD $100,000.00
10.	DATE OF AWARD September 30, 1999
11.	SECOND YEAR'S BUDGET N/A
12.	SECOND YEAR'S BUDGET AMOUNT N/A
13.	THIRD YEAR'S BUDGET PERIOD N/A
14.	THIRD YEAR'S BUDGET AMOUNT N/A

15.	SUMMARY DESCRIPTION OF PROJECT (See instruction on reverse) This hypothesis-based project proposes to implement a comprehensive stress reduction program for corrections officers in five Ohio corrections facilities and their families. This program will include mentoring for new probationary officers, an alternative dispute resolution program, a family orientation program, an employee family informational services hot line and website, and a post-investigation debriefing policy. Qualitative and quantitive methods will be used to collect process and outcome information of each component at each of the five institutions. The evaluation will be conducted by Ohio University, College of Arts and sciences CA/NCF

Exhibit 3

[SEAL] U.S. DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS ☐ OJP ☐ BJA ☐ OJJDP ☐ BJS ☒ NIJ ☐ OVC CHECK APPROPRIATE BOX	**GRANT MANAGER'S MEMORANDUM, PT. 1: PROJECT SUMMARY** ☒ GRANT ☐ COOPERATIVE AGREEMENT PROJECT NUMBER 98-CE-VX-0019

☒ This project is supported under Title I of the Omnibus Crime Control and Safe Streets Act, 42 USC 3701, as amended.

☐ This project is supported under the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

☐ Other: Violent Crime Control and Law Enforcement Act of 1994, 42.U.S.C. 13701 ET. SEQ
1. STAFF CONTACT (Name, address & telephone number) Laura Winterfield National Institute of Justice 810 7th Street NW Washington, DC 20531 (202) 616-3482
2. PROJECT DIRECTOR (Name, address & telephone number) Horst E. Gienapp Ohio Dept. of Rehabilitation and Correction 1050 Freeway Drive North Columbus, OH 43229-0000 (614) 752-1636
3a. TITLE OF THE PROGRAM
3b. POMS CODE (SEE INSTRUCTIONS ON REVERSE)
4. TITLE OF PROJECT Examining the Effects of Ohio's "Truth-in-Sentencing" Reforms on Inmate Institutional Behavior
5. NAME & ADDRESS OF GRANTEE Ohio Dept. of Rehabilitation and Corrections 1050 Freeway Drive North Columbus, OH 43229
6. NAME & ADDRESS OF SUBGRANTEE
7. PROGRAM PERIOD FROM: 01/01/99 TO: 12/01/00

8. BUDGET PERIOD FROM: 01/01/99 TO: 12/01/00
9. AMOUNT OF AWARD $117,570.00
10. DATE OF AWARD September 30, 1998
11. SECOND YEAR'S BUDGET N/A
12. SECOND YEAR'S BUDGET AMOUNT N/A
13. THIRD YEAR'S BUDGET PERIOD N/A
14. THIRD YEAR'S BUDGET AMOUNT N/A
SUMMARY DESCRIPTION OF PROJECT (See instruction on reverse) The proposed project will examine the impact of Ohio's new sentencing reform measures on inmate behavior within the institutional setting. The goals of the project are to: (1) assess the impact of Ohio's Truth in Sentencing reform bill on institutional behavior; (2) determine the consequences of eliminating positive incentives to inmates; (3) determine the consequences of implementing a "bad time" policy on inmate institutional behavior; and (4) provide the Ohio Department of Rehabilitation and Correction with policy recommendations based on research findings related to institutional management issues. The proposed research will employ a quasi-experimental design. Subjects of the study will be three admissions cohorts. Group one represents institutional

behavior prior to sentencing reform, and all data for this group will be collected at one point in time. Group two represents both pre-and post-sentencing reform impact on behavior, and group three represents institutional behavior after the enactment of sentencing reform. Utilizing a repeated measures analysis of variance design, our study will examine whether the effects of these reform measures impact institutional behavior over time, controlling for a number of relevant confounding factors. ca/ncf

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EXHIBIT 4

16.606 State Criminal Alien Assistance Program (SCAAP)

FEDERAL AGENCY:

OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE ASSISTANCE, DEPARTMENT OF JUSTICE

AUTHORIZATION:

Omnibus Appropriations Act, Public Law 106-113, Division B, Section 1000(a); Immigration and Nationality Act, 8 U.S.C. 1252, Section 242 as Amended; Title II, subtitle C, Section 20301, Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322.

OBJECTIVES:

Provides Federal assistance to States and localities who request it for costs incurred for the incarceration of undocumented criminal aliens convicted of a felony

offense(s) or two or more misdemeanors. Additionally, to better identify undocumented criminal aliens and to expedite the process of transferring illegal aliens from State and local correctional institutions to Federal custody in preparation for deportation.

TYPES OF ASSISTANCE:

None.

USES AND USE RESTRICTIONS:

There are no restrictions on or prescribed use of funds. Funds derived from these payments are available to the applicants or the applicant jurisdictions to use as they see fit, as this is essentially assistance to defray cost previously incurred by jurisdictions for the housing of undocumented criminal aliens. Funds need not be used for correctional purposes or even criminal justice purposes, but may revert to the State or county general fund. This is governed by State law or is at the option of the chief executive officer of the applicant jurisdiction. All that BJA requires is the expeditious draw-down of the payment funds, retention of records for the required audit period (3 years), and information necessary to allow the orderly closeout of the payment, if requested by the grantor agency.

ELIGIBILITY REQUIREMENTS:

Applicant Eligibility: States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands and localities or local jurisdictions exercising authority with respect to the incarceration of an undocumented criminal alien. This would cover State prison facilities (including those housing juveniles convicted as adults of felony offenses or two or more misdemeanors) and local jails, whether operated by counties or cities. Applicants are generally State Department of Corrections and local sheriffs or city jail administrators,

pursuant to designation authority to receive the payment from the chief executive officer of the political entity, e.g., Governor, County Executive, Mayor or City Manager. Note: Only one application is accepted from each separate political division (i.e., State, county, city).

Beneficiary Eligibility: States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands and localities or local jurisdictions.

APPLICATION AND AWARD PROCESS:

Preapplication Coordination: No formal preapplication coordination is required. While informal preapplication coordination is not required, it is encouraged that applicants coordinate with any facilities for which they have responsibility that provide overnight, secured lodging (i.e., incarceration) of undocumented criminal aliens. This program is eligible for coverage under E.O. 12372 "intergovernmental Review of Federal Programs." An applicant should consult the office or official designated as the Single Point of Contact in their respective State for more information on what process the State may require of those applying for assistance.

Application Procedure: The Fiscal Year (FY) 2000 SCAAP application for payment process has been modified from previous fiscal year funding. The SCAAP cycle for FY 2000 will be administered via the Office of Justice Programs Internet-based Grants Management System. Inmate data, including the proper inmate identifiers, will either be manually key-stroked into the on-line application system, or submitted on-line by electronically attaching the applicable portions of their inmate databases. The on-line application process will begin in late February, 2000, and end mid-April, 2000. The INS inmate verification process

will last 30 days, beginning in mid-April 2000, and ending in mid-May, 2000. Requests for Payment (RFP) and monetary drawdowns will begin in June 2000, and end no later than 90 days after the date the payment process becomes available. Technical assistance is available to applicants for preparation of the on-line application process by calling the OJP Grants Management System Hotline at 1-888-549-9901.

Award Procedure: The final payment process requires that all applications and all data be fully processed and verified before any payments are made. Inmate data will be verified by the Immigration Naturalization Service (INS). INS will attempt to match the inmate data records provided to records in its databases to obtain the maximum number of confirmed matches. These matches are expected to include three categories: 1) those positively identified (matched) as qualifying undocumented criminal aliens; 2) those who are positively identified (matched) as non-qualifying undocumented criminal aliens within the definitions applicable to SCAAP; and 3) those not positively identified relative to categories 1 or 2.

Applicants will be given credit for a percentage of inmates whose eligibility cannot be determined through positive identification or "match," but have valid foreign countries of birth. Payments will be based on the verified number of aliens incarcerated by each applicant. Payments are granted by the Director of the Bureau of Justice Assistance, Office of Justice Programs, Department of Justice. The payment will be accepted on-line and the acceptance will effect a simultaneous assurance of compliance with conditions.

Deadlines: Applications are due no later than April 15, 2000.

Range of Approval/Disapproval Time: Not applicable.

Appeals: Not applicable.

Renewals: If additional funding for the State Criminal Alien Assistance Program is allocated by Congress, applications can be submitted annually.

ASSISTANCE CONSIDERATIONS:

Formula and Matching Requirements: This program has no statutory formula. Payments are based on the verified number of aliens incarcerated by each applicant and cost considerations which are used to determine relative percentage of total funding each applicant is eligible to receive.

Length and Time Phasing of Assistance: Payments are made within 90 days of application if no data is being verified.

POST ASSISTANCE REQUIREMENTS:

Reports: No reports are required under this payment program.

Audits: Recipients who receive $300,000 or more of Federal funds during their fiscal year are required to submit an organization-wide financial and compliance audit report in accordance with OMB Circular No. A-133, as amended, and as stated in the on-line payment process. Receipt of SCAAP payments is considered in establishing the requirement for an audit under the Single Audit Act.

Records: Financial records, supporting documents, statistical records, a copy of the inmate records submission, and all other records pertinent to a grant shall be retained for a period of at least three years following the closeout of the grant.

FINANCIAL INFORMATION:

Account Identification: 15-0404-0-1-754.

Obligations: (Grants) FY 99 $1,150,650,948; FY 00 est 411,430,000; and FY 01 est $578,852,700.

Range and Average of Financial Assistance: Not available.

PROGAM [sic] ACCOMPLISHMENTS:

This program has assisted States and localities which have requested assistance in defraying the cost incurred for the imprisonment of undocumented criminal aliens, resulting in more than $2.2 billion in SCAAP funds being distributed to approximately 336 State and local applicants in the last 4 years.

REGULATIONS, GUIDELINES, AND LITERATURE:

OJP Financial Guide, OMB Circular No. A-133, and the State Criminal Alien Assistance Program Guidance and Application Kit.

INFORMATION CONTACTS:

Regional or Local Office: None.

Headquarters Office: State Criminal Alien Assistance Program, Office of Justice Programs, Bureau of Justice Assistance, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531. Contact: Maty Santonastasso, Division Director. Telephone: (202) 305-2088.

Web Site Address: http://www.usdoj.gov.

RELATED PROGRAMS:

None.

EXAMPLES OF FUNDED PROJECTS:

Not applicable.

CRITERIA FOR SELECTING PROPOSALS:

Awards will be made on a pro rata share of the average costs of incarceration of a prisoner in the relevant State or locality for verified criminal aliens, based on three factors: 1) the applicant's number of qualifying undocumented criminal aliens; 2) an average length of incarceration; and, 3) the applicant's daily average cost per inmate. Total claims for all applicants will be divided into the available appropriation and each applicant will receive an equivalent percentage payout ("cents on the dollar"). Assistance is contingent on applicants meeting all of the above criteria, and there is no federal obligation until claims have been fully certified. As this amount is NOT expected to meet all claims, each applicant will receive only partial payment of their total request.

Exhibit 5

[SEAL] U.S. DEPARTMENT OF JUSTICE OFFICE OF JUSTICE PROGRAMS ☒ OJP ☐ BJA ☐ OJJDP ☐ BJS ☐ NIJ ☐ OVC CHECK APPROPRIATE BOX	**GRANT MANAGER'S MEMORANDUM, PT. 1: PROJECT SUMMARY** ☒ GRANT ☐ COOPERATIVE AGREEMENT PROJECT NUMBER 96-CV-VX-0039 S-07
☐ This project is supported under Title I of the Omnibus Crime control and Safe Streets Act, 42 USC 3701, as amended.	

☐ This project is supported under the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.	
☒ Other: Violent Crime Control and Law Enforcement Act of 1994, as amended, Pub. L. 103-322	
1.	STAFF CONTACT (Name, address & telephone number) Thomas Mason, Grant Manager OJP, Corrections Program Office 810 7th Street, N.W. Washington, DC 20531 (800) 848-6325
2.	PROJECT DIRECTOR (Name, address & telephone number) Horst E. Gienapp, Grants Chief Ohio Department of Rehabilitation and Correction 1050 Freeway Drive North Columbus, OH 43229 (614) 752-1636
3a.	TITLE OF THE PROGRAM FY 1999 Violent Offender Incarceration/Truth-In-Sentencing Incentive Grant Program
3b.	POMS CODE (SEE INSTRUCTIONS ON REVERSE)
4.	TITLE OF PROJECT Ohio FY 1999 VOI/TIS Supplement
5.	NAME & ADDRESS OF GRANTEE Ohio Department of Rehabilitation and Correction 1050 Freeway Drive North Columbus, OH 43229
6.	NAME & ADDRESS OF SUBGRANTEE
7.	PROGRAM PERIOD FROM: 9/30/1996 TO: 09/29/2004

8.	BUDGET PERIOD FROM: 09/30/1996 TO: 09/29/2004
9.	AMOUNT OF AWARD $12,143,169.00
10.	DATE OF AWARD September 16, 1999
11.	SECOND YEAR'S BUDGET N/A
12.	SECOND YEAR'S BUDGET AMOUNT N/A
13.	THIRD YEAR'S BUDGET PERIOD N/A
14.	THIRD YEAR'S BUDGET AMOUNT N/A
15.	SUMMARY DESCRIPTION OF PROJECT (See instruction on reverse) This award represents a supplement to the fourth year of funding in the Violent Offender Incarceration/Truth-In-Sentencing Incentive Grant Program (VOI/TIS). The program assists states in developing additional capacity for violent offenders through construction or lease of prison beds. Beginning this year, up to 10 percent of supplemental grant awards may be used for drug testing and interventions. The Ohio Department of Rehabilitation and Correction (ODRC) will use grant funds to continue the programs listed below. To date, Ohio has received $44,525,109 in VOI/ITS funding, which is being

used to partially finance the following nine projects: 1) construction of a 369-bed housing unit at the Richland Correctional Institution; 2) construction of a 500-bed DUI center at the North Coast Treatment Facility; 3) planning for a new 240-bed dormitory at the Belmont Correctional Institution; 4) renovation of the Clermont County Jail by adding 11 beds; 5) 75-bed expansion of the Lake County Jail; 6) renovation of the Muskingum County Jail by adding 22 beds; 7) construction of a new 40-bed jail facility for Jackson County; 8) leasing of 16 juvenile beds by the Ohio Department of Youth Services (ODYS); and 9) leasing of 30 serious female offenders beds by the ODYS. More information is needed about the conversion of the CCI warehouse before it can be approved as a potential VOI/TIS project. The ODRC does not currently have plans to use award funds for drug testing and interventions.

nca/ncf

EXHIBIT 6

PART 3A

OHIO DEPARTMENT OF EDUCATION
OFFICE OF CAREER-TECHNICAL
AND ADULT EDUCATION

ADULT BASIC AND LITERACY EDUCATION
INSTRUCTIONAL GRANT
FY 2001 GENERAL PROGRAM ASSURANCES

ASSURANCES to the Ohio Department of Education regarding application for funds under authority of the Adult Education and Family Literacy Act, Title II of the Workforce Investment Act, P.L. 105-220. The applicant hereby assures the Ohio Department of Education that:

1. The information contained in this application is correct and accurate to the best knowledge of the applicant agency.

2. Funds received under this grant program will be used to supplement and not supplant funds already available to the applicant from other non-federal sources for purposes authorized by the Adult Basic and Literacy Education Instructional Grant Program.

3. Funds will be used to provide Adult Education and Literacy Services, in order to: (1) assist adults to become literate and obtain the knowledge and skills necessary for employment and self-sufficiency; (2) assist adults who are parents to obtain the educational skills necessary to become full partners in the educational development of their children; and (3) assist adults in the completion of a secondary school education.

4. Programs, services, and activities supported with funds approved for use in this application will be used to meet or exceed established Core Indicators of Performance and improve the quality of adult education programs, including programs for educationally and economically disadvantaged adults, to initiate new programs of high quality, or, where necessary, to maintain programs.

5. Funds received under this grant application will be expended in accordance with all applicable statutory provisions, including the Adult Education and Family Literacy Act, Title II of the Workforce Investment Act, P.L. 105-220 and according to the provisions of Ohio's approved State Plan for Adult Basic and Literacy Education and the approved local application.

6. The control of funds provided under this title, and title to property derived therefrom, shall be under the authority of the approved applicant agency for the

uses and purposes provided in this title, and that the approved agency will administer such property and funds and apply them only for the purposes for which they are granted. Upon termination of grant support, the entitled agency may reassign grant purchased property to another federally supported program of the agency or transfer title to another agency's ABLE program identified by the Ohio Department of Education.

7. The applicant shall use fiscal control and fund accounting procedures that will ensure proper disbursement and accounting of funds received pursuant to this grant application.

8. The grantee shall keep such records using required reporting forms and provide such information to the Ohio Department of Education and its authorized agents as reasonably may be required for fiscal audit and program evaluation.

9. The applicant will make accurate and current mid-year and annual performance reports, via ABLELink, and such other reports to the Ohio Department of Education. These reports will be in such form and containing such information as may be reasonably necessary to enable the department to perform its duties under this title, including information relating to the educational achievements of adult students. The applicant will keep such records and afford such access thereto as the department and its authorized agents may find necessary to assure the correctness and verification of such reports.

10. Documentation of hours worked will be maintained for all part-time paid employees of the program. In addition, appropriate time distribution records for prorated portions of full-time positions will be kept.

These will be maintained in the district or agency treasurer's office and/or office of the project director.

11. The grantee will not discriminate on the basis of sex, race, color, persons with disabilities, age, and/or national origin in its literacy programs, activities, employment or admission policies and practices, as required by Education Department General Administrative Regulations (EDGAR) 34 CFR Part 75.500.

12. Adults enrolled in programs supported by this grant will not be required to pay tuition, fees, or other charges, nor will they be required to purchase books or other materials needed for participation in the program.

13. The governing board of the applicant agency is in compliance and will continue to comply with the provisions of section 438 of the Rights and Privacy Act, P.L. 93-380.

14. Personnel employed as teachers and instructional aides by public school districts in projects financed under this title will be certificated as required by Section 3319.22, 3319.30, and 3319.088 of the Ohio Revised Code.

15. Personnel or programs financed under this title will not be certified for inclusion in the state foundation program.

16. Project administration shall utilize an advisory committee with representatives from education, government, social services, business and the local community.

17. The project administrator shall attend the Fall & Spring Directors' Meetings and others as determined by the State ABLE Office.

18. If application is being made by a private nonprofit agency, organization, or institution, such applicant has secured a certificate of tax exempt status issued by the U.S. Internal Revenue Service under authority of Section 501(c)(3) of the Internal Revenue Code. In such case, a copy of the tax-exempt certificate is attached (Attachment A) to the application and the agency's tax identification (TI) number has been identified on the cover page of this application. Any subcontractor receiving funds from the grant applicant will also satisfy this same requirement.

19. The filing of this application has been duly authorized by the governing board of the applicant agency, and the indicated representative has been duly authorized by formal action of said board to file this application for, and in behalf of, said agency, and otherwise to act as the authorized representative of the agency in connection with this application. Said authorization was/will be voted and made a part of the minutes in an official meeting of the governing authority held on or will be held on, ___ 2000.

/s/ Jerry [Illegible] — 6/29/00
Signature of Superintendent/ Chief Executive Officer — Date

/s/ [Illegible] — [Illegible]
Signature of the Treasurer/ Chief Fiscal Officer — Date

ALAN TROOPS, ACADEMIC DIRECTOR
Name of Authorized Representative
(If other than Superintendent/ Chief Executive Officer)

/s/ Alan Logan — 6/29/00
Signature of Authorized Representative — Date

EXHIBIT 7

[SEAL] State of Ohio
Department of Education

Susan Tave Zelman
Superintendent of
Public Instruction

Career-Technical and Adult Education
Joanna Kister, Director, 65 South Front Street,
Room 907, Columbus 43215-4183

To: Dr. Jerry McGlone, Superintendent – Ohio Central School System

From: Dwight E. Anstaett, Corrections Consultant – ODE
/s/ Dwight E. Anstaett

RE: Career-Technical and Adult Funding

Date: November 30, 2000

This correspondence is intended to define the sources and permissible uses of Career-Technical and Adult Education funds currently and historically provided through the Ohio Department of Education to the Ohio Central School System.

The Ohio Central School System operates ODE approved Career-Technical and Adult Education programs designed to enhance the employability of inmate students within institutions operated by the Ohio Department of Rehabilitation and Correction. **These programs shall not discriminate against protected classes as defined by applicable state and federal regulations.**

The Ohio Department of Education's Office of Career-Technical and Adult Education oversees the funding and operation of approved Career-Technical programs operated by the Ohio Central School System. State dollars support

unit funding and equipment purchases for secondary and adult programs. In addition, federal dollars are provided through ODE as authorized by the Carl D. Perkins Act to support modernization efforts and equipment purchases. All state and federal funding provided through ODE must be used exclusively to support the operation of approved Career-Technical programs within the Ohio Central School System.

Please contact me if questions arise. Thank you very much.

CC: Mr. Jerry Huffman

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

LEE HAMPTON, et al.,	:	
Plaintiffs,	:	**CASE NO. C2-97-382**
v.	:	**JUDGE GRAHAM**
REGINALD WILKINSON, et al.,	:	**MAGISTRATE JUDGE ABEL**
Defendants.	:	

NOTICE OF FILING DEPOSITION

Now come Defendants and hereby notify the Court and the Parties that they are filing the excerpts of the June 19, 1996 deposition of Matthew Meyer taken in connection with the case of *Syder, et al v. Voinovich*, Case No. C2-94-536 (S.D. Ohio) quoted in the Defendants' "Memorandum In Support of Partial Motion To Dismiss", filed in this case on November 15 2000 (Doc. No.78).

Respectfully submitted,

BETTY D. MONTGOMERY
Attorney General

/s/ Todd Marti
TODD MARTI (0019280)
Assistant Attorney General
Corrections Litigation Section
140 East Town Street, 14th Floor
Columbus, OH 43215
(614) 644-7233

[Certificate Of Service Omitted In Printing]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

JOHN MILLER, et al.,

Plaintiffs,

v.

REGINALD WILKINSON, et al.,

Defendants.

Case No. 2:98-CV-275
MAGISTRATE JUDGE KEMP

JOHN GERHARDT,

Plaintiff,

v.

ALAN LAZAROFF, et al.,

Defendants.

Case No. 2:95-CV-517
JUDGE SARGUS
MAGISTRATE JUDGE KEMP

LEE HAMPTON, et al.,

Plaintiffs,

v.

REGINALD WILKINSON, et al.,

Defendants.

Case No. 2:97-CV-382
JUDGE GRAHAM

ORDER

(Filed Aug. 4, 2003)

This matter is before the Court on the Plaintiffs' July 10, 2003 Motion to Certify this Court's February 25, 2002 Order upholding the constitutionality of the Religious Land Use and Institutionalized Persons Act ["RLUIPA"], 42 U.S.C. § 2000cc, *et seq.*, for immediate appeal to the

United States Court of Appeals for the Sixth Circuit. The Defendants, including the intervenor, Department of Justice, have no opposition to the motion.

Plaintiffs filed the motion in order "to provide for a firm basis for appellate jurisdiction that will ensure a disposition of the current appeal on its merits." (*Plaintiffs' Motion* at 2). On March 1, 2002, Defendants filed an interlocutory appeal of this Court's February 25, 2002 Order under 28 U.S.C. § 1291. As stated in their present motion, Plaintiffs are uncertain of the Sixth Circuit's jurisdiction over Defendants' appeal and, therefore, ask that the matter be certified for appeal under 28 U.S.C. § 1292(b).

The statute provides, in relevant part:

> (b) When a district judge, in making in a civil action an order not otherwise appealable under this section, shall be of the opinion that such order involves a controlling question of law as to which there is a substantial ground for difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of the litigation, he shall so state in writing in such order.

28 U.S.C. § 1292(b).

In this case, the Court first finds that its previous Order upholding the constitutionality of RLUIPA involves a controlling question of law. As the Plaintiffs point out, resolution of the constitutionality of the statute will define the ultimate outcome of these consolidated cases. Furthermore, the Sixth Circuit has yet to decide the issue. The only circuit court to address the matter is the Ninth Circuit, which upheld the statute as a constitutional

exercise of Congress' powers under the Spending Clause. *See Mayweathers v. Newland,* 314 F.3d 1062 (9th Cir. 2002), *petition for cert. filed*, 71 U.S.L.W. 3725 (U.S. May 7, 2003) (No. 02-1655). Two district courts to consider the matter have, however, reached a contrary conclusion. *See Kilaab Al Ghoshujah v. Dept. of Corrections of State of Wisconsin,* 250 F.Supp.2d 1016 (ED. Wis. 2003); *Madison v. Riter,* 240 F.Supp.2d 566 (W.D. Va. 2003). In view of the current state of the law, the Court has little trouble concluding that there exists a substantial ground for disagreement as to the constitutionality of RLUIPA. Finally, the Court finds that an immediate appeal of this Court's February 25, 2003 Order will materially advance the ultimate termination of this litigation. As stated above, the issue of constitutionality of the statute will affect the ultimate disposition of Plaintiffs' claims.

In sum, the Court concludes that all elements of 28 U.S.C. § 1292(b) are satisfied. The Plaintiffs' Motion to Certify this Court's February 25, 2002 Order (**Doc. #279**) is **GRANTED**. The Clerk is **DIRECTED** to immediately certify the February 25, 2002 Order to the United States Court of Appeals for the Sixth Circuit pursuant to 28 U.S.C. § 1292(b).

IT IS SO ORDERED.

8-4-2003
DATE

/s/
EDMUND A. SARGUS, JR.
UNITED STATES
DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JON B. CUTTER, et al.,	:	**CASE NOS. 02-3270**
Plaintiffs-Appellees,	:	**02-3299**
	:	**02-3301**
v.	:	
REGINALD WILKINSON, et al.,	:	
	:	
Defendants-Appellants.	:	

On Appeal From the United States District Court for the Southern District of Ohio, Eastern Division

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DEFENDANT-APPELLANTS' FINAL OPENING BRIEF

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* * *

[60] close identity to RFRA. They are precisely the types of diversions and costs discussed in *New York* and *Printz*, but they will be borne by the states, not Congress. Further, there will undoubtedly be political costs exacted for using the tax dollars of Ohio's African-American, Hispanic, and Asian citizens to accommodate Plaintiffs' "religious" expression, expression that advocates the disenfranchisement, if not the outright extermination, of Ohio's racial minorities. "[I]t will likely be [state elected officials], not some federal official, who will be blamed for" such a patently offensive use of public resources.[188]

[188] *Printz*, 521 U.S. at 930.

New York and *Printz* establish that Congress cannot compel states to affirmatively regulate in accordance with federal policy choices. RLUIPA does exactly that, regulating the way states regulate one of the most highly regulated aspects of their internal operations. Moreover, it does so in a way that will force the states to absorb the costs of the regulatory regime it has imposed. It is hard to imagine a more flagrant violation of federalism.

VIII. CONCLUSION

The Defendants ask this court to reverse the decision below and to remand these cases with instruction to dismiss Plaintiffs' RLUIPA claims.

Case No: 02-3270: 02-3299: 02-3301

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

(Filed Sep. 23, 2003)

JON B. CUTTER; J. LEE HAMPTON;

Plaintiffs – Appellees

UNITED STATES OF AMERICA

Intervenor – Appellee

v.

REGINALD WILKINSON; DAVID SCHWARTZ; NICHOLAS G. MENEDEZ; L. C. COVAL; K. L. BROWN; GEORGE D. ALEXANDER; DIANNE WALKER; JIM ERWIN; RON CARNEIN; RUDY PRINGLE; WALTER LOWERY

Defendants – Appellants

Upon consideration of the joint petition for leave to appeal,

It is ORDERED that the petition for leave to appeal is granted.

ENTERED BY ORDER
OF THE COURT

/s/ Leonard Green/tnb
Leonard Green, Clerk

Nos. 02-3270/3299/3301

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JON B. CUTTER, ET AL., Plaintiffs-Appellees, UNITED STATES OF AMERICA, Intervenor-Appellee, v. REGINALD WILKINSON, ET AL., Defendants-Appellants.	)	ORDER

(Filed Mar. 3, 2004)

BEFORE: MOORE and GILMAN, Circuit Judges; and TARNOW,* District Judge.

The court having received two petitions for rehearing en banc, and the petitions having been circulated not only to the original panel members but also to all other active judges of this court, and less than a majority of the judges having favored the suggestion, the petitions for rehearing have been referred to the original panel.

The panel has further reviewed the petitions for rehearing and concludes that the issues raised in the petitions were fully considered upon the original submission and decision of the cases. Accordingly, the petitions are denied.

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* Hon. Arthur J. Tarnow, United States District Judge for the Eastern District of Michigan, sitting by designation.

ENTERED BY ORDER OF THE COURT

/s/ Leonard Green
Leonard Green, Clerk

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